TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. [redacted] 52

PEDRO DE ELZABURU, APPELLANT,

vs.

GUERRA CHAVES ET AL.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

FILED JANUARY 26, 1904.

(24,016)

(24,016)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 336.

PEDRO DE ELZABURU, APPELLANT,

vs.

GENERA CHAVES ET AL.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

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a Supreme Court of Justice of Porto Rico.

PEDRO DE ELZABURU, Plaintiff and Appellant,
vs.
GENARA CHAVES et al., Defendants and Respondents.

Nullity of Title and Ejectment.

On Appeal to the Supreme Court of the United States.

1 ISLAND OF PORTO RICO,
Judicial District of San Juan, ss:

In the District Court.

Civil. No. 3014.

PEDRO DE ELZABURU, Plaintiff,
v.
GENARA CHAVES, GREGORIA CHAVES, RAFAELA CHAVES, and JUAN CLEMENTE CHAVES, Defendants.

Nullity of Title and Ejectment.

Complaint.

Pedro de Elzaburu y Vizcarrondo, through his attorney, Jacinto Texidor, appears in court alleging and stating:

First.

That the plaintiff is the sole owner of the following estate: "Rural.—Tract of land situated at a place known as 'Honduras,' in the ward of Sábana Llana, Municipality of Rí Piedras, consisting of 112 cuerdas, equivalent to 44 hectares, 17 ares and 16 centiares; bounded on the North by lands of Frutos Caloca and Juana Rivera; on the South by lands of Laura García, formerly of Atanasio Vargas, Julia Zayas, Prudencio de la Cruz and the Succession of Luis Vázquez; on the East by lands of Ignacio Llompart, Valentín Rondón, Juan Hernaiz, Prudencio de la Cruz, and María de la O. Andino; and on the West by lands of Atanasio, or Anastasio Vargas, afterwards of Laureano Rosario." Plaintiff alleges that he acquired said property by purchase from the Spanish Government under public deed executed by Notary Mauricio Guerra Mondragón y Mejías, in San Juan, P. R., on October 17, 1898, which was recorded in the Registry of Property of San Juan.

Second.

That at the time of the sale of said property to the plaintiff, the owner thereof, as above said, was the Spanish Government,

which was in possession of the entire tract; that the plaintiff has continued in such possession; and that the Spanish Government as well as the plaintiff, possessed said property under title of ownership.

2

Third.

That the above mentioned land formed part of another tract of from 140 to 150 cuerdas owned by Alonso Hernández, who acquired and possessed the same under title of ownership, in and from the year 1854. That Alonso Hernández hypothecated said property in favor of the Spanish Government as security to guarantee the faithful performance of his duties as Collector of Internal Revenue at Caguas. An investigation of a charge of embezzlement having later been made against Alonzo Hernández, the property was adjudicated to the Government on April 17, 1895. When the demarcation and survey of the property were made so that the Spanish Government might take possession thereof, it was found to contain 112 cuerdas only, which constitute the estate described in this complaint.

And it is alleged by the plaintiff: That the Spanish Government took possession of the above described property on June 5, 1895 and that the said demarcation and survey were witnessed by the defendants herein and Paula Chaves, their mother, without making the least protest.

Fourth.

Pedro de Elzaburu, having purchased the property described in this complaint desired to take real possession thereof, and did so in the presence of, among others, the defendants and Paula Chaves who made no opposition nor protested against such possession.

Fifth.

That after the Spanish Government took possession of the land, Paula Chaves, the mother of the defendants and one of the persons who witnessed the taking of such possession, instituted proceedings to show that she possessed 50 cuerdas of land in Honduras,
3 rural section of Sábana Llana, Municipality of Río Piedras, which land was bounded on the North, by lands of José Fernández Villamil; on the south by lands of Serapio Gómez; on the East by the road to Trujillo Alto; and on the West by lands of Laureano Rosario.

Said proceedings were approved and recorded in the Registry of Property. The plaintiff alleges that the estate of 50 cuerdas of land to which said possessory proceedings refer, is a part of the estate of 112 cuerdas herein described which had been taken possession of by the Spanish Government and later by the plaintiff. And plaintiff further alleges: That when Paula Chaves instituted and prosecuted the possessory proceedings above mentioned she was perfectly aware of these circumstances and knew that said 50 cuerdas of land were possessed by the Spanish Government as an integral part of the 112 cuerdas of land adjudicated to said Gov-

ernment in the proceedings instituted against Alonso Hernández.

Sixth.

The plaintiff alleges: That in the aforesaid proceedings Paula Chaves established as a basis the false fact that she was the possessor of the estate, and that upon establishing such false fact she did so with the intention of obtaining, as she thereby obtained, a declaration of possession in her favor. Said declaration was obtained by means of fraud.

Seventh.

That in the year 1905 the defendants herein, as heirs of Paula Chaves, appeared in the Municipal Court of San Juan for the purpose of converting the possession of the 50 cuerdas previously made in favor of Paula Chaves, into a dominion title. The plaintiff duly opposed such conversion and filed a complaint praying that it be definitively declared that Gregoria, Genara and Rafaela Chaves and Juan Clemente Chaves were not in possession of the
4 estate of 50 cuerdas, the dominion of which they sought, and that said estate was legally possessed by Pedro de Elzaburu. The trial having been held the Municipal Court of San Juan rendered judgment in accordance with the prayer of the plaintiff, Pedro de Elzaburu. An appeal from said judgment having been taken by the defendants the Chaves, the case was tried de novo in the District Court of San Juan and prosecuted most fully. By judgment of March 31, 1907, the court declared that the tract of 50 cuerdas of land in Sábana Llana, Río Piedras, place denominated Honduras, which is bounded on the North by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; on the East by the road from Río Piedras to Trujillo Alto; and on the West by lands of Laureano Rosario, is not in possession of Gregoria, Rafaela, Genara and Juan Clemente Chaves, but is lawfully possessed by Pedro de Elzaburu, and forms part of the estate of 112 cuerdas owned by Elzaburu. And it is alleged by the plaintiff that said judgment of March 31, 1907, is now a final one.

Eighth.

That notwithstanding said judgment and the fact that the plaintiff has on different occasions required the defendants to vacate said 50 cuerdas of land, the defendants continue using and unlawfully possessing them to the prejudice of the plaintiff.

For the foregoing reasons the plaintiff prays the court to render in due time a judgment declaring that the possessory proceedings instituted by Paula Chaves in connection with the 50 cuerdas of land described in this complaint are null, and that the entry caused thereby in the Registry of Property of San Juan is also void; that the lawful owner and possessor of said property is Pedro de Elzaburu y Vizcarrondo, and that said 50 cuerdas of land should be delivered to him, taxing the costs against the defendants.

(Signed) JACINTO TEXIDOR,
Counsel for Plaintiff.

5 *Defendants' Demurrers.*

The defendants, Genara, Gregoria, Rafaela and Juan Clemente Chaves, through their counsel, Manuel F. Rossy, present the following

Demurrers.

1. The plaintiff states in the first count of his complaint that on October 17, 1898, he purchased an estate of 112 cuerdas and forthwith entered into possession thereof.

In the fifth count of his complaint he states that Paula Chaves, the mother of the defendants, instituted possessory proceedings in connection with 50 cuerdas of land, which, according to the plaintiff, form part of the estate possessed by him since 1898, and which proceedings Paula Chaves recorded in the Registry of Property.

And in the seventh count of his complaint the plaintiff states that in 1905, the defendants, as heirs of Paula Chaves, sought to convert the possession of the 50 cuerdas belonging to Paula Chaves, into dominion.

In the prayer of the complaint the annulment of the possessory title of Paula Chaves, and of its entry in the Registry, is requested.

The demurrer as to prescription is inferred from the above, because, in accordance with Section 1268 of the Civil Code, the action for nullity shall last four years, and the possessory proceedings, the nullity of which is sought, were instituted more than four years ago, since if in the year 1905, as stated by the plaintiff, the heirs of Paula Chaves tried to co-vert such possession into dominion, there is no doubt that said possession must at least have been prior thereto; and from said date to the present time more than the four years in which the nullity may be sought, have elapsed:

6 2.

The plaintiff states that he is in possession of the 112 cuerdas of which his property in Sábana Llana, Río Piedras, is composed, but nevertheless, he requests the nullity of the possession of 50 cuerdas of said property, which defendants have, and that said 50 cuerdas be delivered to him.

This shows that the complaint is ambiguous, unintelligible and uncertain, because on the one hand it is averred that the plaintiff is in possession of said 50 cuerdas, and on the other, he requests that they be delivered to him because they are in possession of the Chaves.

3.

The plaintiff states that he is in possession of the 112 cuerdas of his estate; and requests the nullity of the possessory proceedings to 50 cuerdas which the defendants hold, which 50 cuerdas, as stated by him, are his; and also requests that said 50 cuerdas be delivered to him.

This shows that the plaintiff does not state facts sufficient to constitute his action requesting the delivery of the 50 cuerdas of

land, since, as stated by him, they are possessed by the defendants by virtue of a possessory proceeding recorded in the Registry of Property.

For the above reasons we pray the District Court to admit all, or any of these three demurrers, and to dismiss the complaint, with costs.

San Juan, June 5, 1909.

(Signed) MANUEL F. ROSSY,
Counsel for Defendants.

Copy received:
JACINTO TEXIDOR,
Counsel for Plaintiff.

Answer to Complaint.

The defendants, through counsel Manuel F. Rossy, file
7 their answer to this complaint, and allege:

1.

That they deny all the facts of the complaint marked with numbers 1, 2, 3, 4, 5, 6, 7 and 8.

2.

As new matter of opposition the defendants allege:

First. As security for the faithful discharge of his duties as Collector at Caguas in 1854, Alonso Hernández hypothecated an estate situated in the ward of Honduras, jurisdiction of Río Piedras, which was composed of 34.23 cuerdas, though no boundaries were given. Said estate was attached to cover a defalcation of said Hernández. The public Treasury knowing that José Saturnino Otero owed Hernández eight hundred pesos, attached an estate which the brothers Otero possessed in Sábana Llana, place known as Honduras, Río Piedras, which was composed of from 140 to 150 cuerdas; bounded by lands of the Marchioness de León and of José de la Cruz.

Second. The proceedings were commenced in 1895, and on May 31st of said year, the Mayor of Río Piedras was ordered to take possession of an estate situated in the ward of Honduras, Río Piedras, composed of 112 cuerdas and 1,921 square yards; bounded on the North by lands of Frutos Caloca and Juana Rivera; on the South by lands of Anastasio Vergas, Julia Zayas, formerly María Reyes, Prudencio de la Cruz and the Estate of Luis Vergne; on the East by lands of Ignacio Llompart, Valentín Rondón, the Estate of Juan Hernaiz and Prudencio de la Cruz, formerly José de la Cruz, and María de la C. Andino; and on the West, by lands of Anastasio Vergas; which are now owned by Laureano Rosario.

Third. On June 5, 1895, the Mayor and the Secretary of the Municipality of Río Piedras, attached the above described lands in the name of the public Treasury, but in giving the South-
8 ern boundary, they made reference to the "Estate of Luis Vázquez" instead of to the "Estate of Luis Vergne". The at-

tachment was effected without citation of the owners of the adjacent properties. The possession of said property was recorded in favor of the Government on September 14, 1895, in volume 9 of Río Piedras, folio 239, property 503, first entry.

Fourth. This property was sold at auction under what in the Spanish administration was called "Bill of conditions or rules to which the auction sale is subject."

There was published a notice of the auction sale of the estate which was inventoried under number 230, which is composed of 112 cuerdas and 1,921 square yards, equivalent to 44 hectares, 17 ares and 16 centares, situated in the jurisdiction of Río Piedras, ward of Sábana Llana, and place known as Honduras; bounded on the North by lands of Frutos Caloca and Juana Rivera; on the South by lands of Anastasio Vargas, Julia Zayas, formerly María Reyes, Prudencio de la Cruz and the Estate of Luis Vergne; on the East by lands of Ignacio Llompart, Valentín Rondón, the Estate of Juan Hernaiz and Prudencio de la Cruz, formerly José de la Cruz and María de la C. Andino; and on the West by lands of Antonio Vargas, now Laureano Rosario.

Among other conditions of the sale, there appeared the following:

"11. Within the eight days following that on which the purchaser is notified of the approval of the sale, he shall pay the full purchase price if the sale is for cash, and if on time, the first instalment, and he shall at the same time execute the promissory notes corresponding to the other payments. In case the purchaser allows eight days to elapse without making payment in the aforesaid manner, the sale shall be ineffective, and the purchaser shall forfeit to the State the deposit of 10% which he must make in order to become a bidder, and he shall forfeit all rights to any claim therefor. 12. As soon as the purchase price is paid, should the sale be for cash, or the first instalment, should it be on part payments, and provided this is done within the eight days after notification of the approval of the sale is given to the interested party, the purchaser shall be given possession of the property sold and a possessory deed shall be executed to him. Should the purchase be on instalments and without prejudice to the general obligation of property, the estate shall remain specially mortgaged in favor of the Treasury until full payment therefor shall have been made. (Should the estate be rural, the purchaser may at his own expense and upon taking possession thereof, cause a demarcation thereof to be made, but should he fail to do this, he shall have no right to claim from the Treasury if it should later appear that the property is not of the extension stated in the advertisement. 13. The amount of each instalment shall be indefectibly paid when it becomes due, and the failure to satisfy any of them shall be sufficient ground for the Treasury to attach the property and again sell it at public auction to the prejudice of the purchaser."

Fifth. The estate above described having been sold at auction on October 15, 1897, was adjudicated to Juan Manuel Cuadrado, who neither took possession thereof nor obtained title thereto, nor paid any of the instalments of his bid which was accepted by the public

administration, but who, on October 16, 1898, proposed the cession of his adjudication to the plaintiff, Elzaburu, which proposition was accepted by the Treasury. Elzaburu then paid the first of the ten instalments in which Cuadrado bound himself to pay the six hundred pesos as price of the estate.

Sixth. By deed of October 17, 1898, executed before Notary Mauricio Guerra, of San Juan, the Secretary of the Treasury of the Autonomic Government of Porto Rico sold the aforesaid property of 112 cuerdas and 1,921 square yards, equivalent to 44 hectares, 17 ares and 16 centiares, to Pedro de Elzaburu, also giving as a Southern boundary the lands of the "Estate of Luis Vázquez", as had already been done by the Mayor of Río Piedras, when he seized the property on December 19, 1898, and as a second entry.

Seventh. In spite of this deed, the Secretary of the Treasury did not give to Elzaburu possession of the property which he sold him, nor did the latter enter into possession thereof as provided by law, nor in the manner in which it was conveyed to him.

Eighth. From that time on Elzaburu devoted himself to
10 litigating with the owners of the lands adjoining his property for the purpose of forming his own property, of which he came to possess 32 cuerdas only, for he obtained 40 cuerdas from Juan Mollfulleda in a proceeding for unlawful detainer decided in his favor by the Supreme Court on April 11, 1906, and now he is trying to acquire by this suit 50 cuerdas more from the property of the Chaves.

Ninth. In the proceedings for unlawful detainer against Mollfulleda, Elzaburu recommended the Engineer José Escuté to make a survey and a plan of his property, the Engineer Escuté having found that the estate contained only about 110 and ½ cuerdas, Elzaburu holding about 27 hectares, 97 ares, and 55 centares, the southern boundary being the lands of the Estate of Luis Vergne instead of Luis Vázquez, who does not appear.

Tenth. Neither has Elzaburu shown that he paid the nine instalments which he bound himself to pay from 1898, at the rate of sixty pesos each year.

Eleventh. A decree was published in the Porto Rico Gazette of September 10, 1898, issued by the Captain General of Porto Rico, in which it was stated that according to a cablegram received from the Minister of War and by virtue of Article 4 of the Protocol of August 12, 1898, concerted by Spain and the United States, the Military Governor of this Department, General Ortega, the Commandant of the Navy, Mr. Vallarino, and the Auditor, Mr. Sanchez del Aguila, had been appointed Royal Commissioners. In the Gazette of September 14, of the same year, there was published, with an order of execution from the Governor of this Island, a Royal Decree from the Government of Spain, dated August 20, 1898, appointing said gentlemen as commissioners to agree upon and execute the details of the evacuation of this island.

11 Twelfth. As a consequence of said Protocol of August 12, 1898, the American Government was gradually taking possession of the island, which had already been ceded to it by the

Spanish Government. At midday on October 13, 1898, Lieutenant Colonel Cooper of the American Army arrived at Río Piedras with a detachment of cavalry and one of infantry, and took possession of the town in the name of the President of the United States, a record of such proceedings having been drawn in the city hall, which record was signed by the municipal employees as well as said lieutenant colonel and his interpreter, Mr. Loubriel, after which the American flag was hoisted. Thus the Municipality of Río Piedras was incorporated or formed part of the United States.

Thirteenth. On October 15, 1898, the last Governor General of Porto Rico, General Macías, embarked with the troops, documents and other objects of the Spanish administration, in the Spanish steamer "Covadonga."

Fourteenth. About that time, but certainly before October 17th, General Brooke, who had been appointed Chief of the Military District of Porto Rico, arrived and encamped at Río Piedras with his troops.

Fifteenth. At midday on October 18th, 1898, the American flag was hoisted over the Treasury building and the city hall of San Juan. Major General Brooke had reached San Juan in the morning and immediately published his first general order of the Department of Porto Rico, which provided that for the convenience of the civil administration of Porto Rico, the island was divided into two districts, the district of Ponce and the district of San Juan, the latter under the command of Brigadier General Grant. The town of Rio Piedras belongs to the latter district.

Sixteenth. None of the orders of any of the departments
12 of the government of Porto Rico were published in the official newspaper from October 15th, when the last Spanish Governor, General Macías, embarked, and on which day he signed his last decrees, to October 21st, when General Brooke appointed the persons who were to hold the offices of Secretaries of the Government, of Justice, of Finance, and of Development, of the civil government of Porto Rico.

Seventeenth. The property of the defendants is composed of 50 cuerdas, equivalent to 19 hectares, 65 ares, and is situated at the place known as Honduras, ward of Sábana Llana, Municipality of Río Piedras, and is bounded on the North by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; on the East by the road leading from Río Piedras to Trujillo Alto; and on the West by lands of Laureano Rosario. This property was purchased by Paula Chaves y Cruz, mother of the defendants, from Santos Caneti, without any written title, about the year 1875. For this reason she instituted possessory proceedings, which were approved by the Municipal Court of Río Piedras on November 7, 1895, and recorded in the Registry on March 11, 1896, in volume 10 of Río Piedras, folio 63, estate number 528, first entry.

Eighteenth. The defendants are, therefore, in the material and lawful possession of said estate, which the plaintiff has never, in whole or in part, possessed under any circumstances.

In view of the foregoing allegations of this answer the defendants

pray the court to dismiss the complaint, with costs, because the plaintiff:

1. Lacks a cause of action upon which to claim the estate of 50 cuerdas possessed by the defendants under a possessory title recorded in the Registry of Property on March 11, 1896, and in view of their tenancy thereof, in fact and right, from 1875, when their
13 mother, Paula Chaves y Cruz bought of Santos Caneti, to the present date, they also having acquired the dominion of the property by prescription.

2. The plaintiff also lacks a cause of action upon which to claim said lands and the fruits thereof, because his title, which consists of the deed of October 17, 1898, is void and is of no legal effect against the defendants, and although it were valid, it is not preferable nor superior to the defendants' title.

3. He also lacks a cause of action because even if the Government of Spain had had power and jurisdiction to convey to the plaintiff the estate of 112 cuerdas, situated in Río Piedras after the latter had become American Territory, it could not lawfully convey to the plaintiff any property rights to the lands of the defendants.

4. The plaintiff also lacks a cause of action on which to request the nullity of the possessory title of Paula Chaves y Cruz, dated November 7, 1895, and of its record in the Registry under date of March 11, 1896, because the legal term within which such nullity could be requested had expired.

Cross-complaint.

In accordance with Section 115 of the Code of Civil Procedure, the defendants, Genara, Gregoria, Rafaela and Juan Clemente Chaves, file the present cross-complaint, alleging:

1.

That they herein reproduce the eighteen allegations of their answer to the complaint of Pedro de Elzaburu.

2.

That from the year 1875, when Paula Chaves purchased from Santos Caneti the estate of 50 cuerdas described in the seven-
14 teenth allegation of the answer to the complaint, the said Paula Chaves y Cruz, and afterwards her children and heirs, have possessed said estate under title of ownership, and as such have paid the taxes levied on said property every year.

3.

That in 1906, the defendants, the Chaves, caused their possessory title to said estate of 50 cuerdas, which was recorded in the Registry in favor of their mother, on March 11, 1896, to be converted into dominion title; and that as Elzaburu opposed, the District Court of San Juan decided on May 31, 1907, that Genara, Gregoria, Rafaela

and Juan Clemente Chaves do not possess the said estate of 50 cuerdas under title of ownership, said estate of 50 cuerdas forming part of that of 112 cuerdas belonging to Elzaburu who possesses the same lawfully, and that, therefore, the Chaves have no right to convert into dominion their possession as recorded in connection with the aforesaid property.

4.

That as a consequence of said judgment Elzaburu brought an action of unlawful detainer against the Chaves in order to recover from them the estate of 50 cuerdas; but the District Court of San Juan, by judgment of March 31, 1908, dismissed the action of unlawful detainer on the ground that such was not the proper action for the discussion and preference of titles to property. This judgment was affirmed by the Supreme Court on January 12, 1909.

5.

That such has been the reason for the institution of this action.

In view of this cross-complaint Genara, Gregoria, Rafaela and Juan Clemente Chaves pray the court to declare:

1. That they are the lawful owners, by virtue of possession recorded since March 1896, and continuous possession since 1875, of the estate of 50 cuerdas described in the seventeenth allegation of the answer to the complaint.

2. That said possession, by virtue of the lapse of time, has become dominion.

3. That Pedro de Elzaburu has never possessed said estate under title of ownership.

4. That Elzaburu shall pay the costs and expenses of this counterclaim.

San Juan, March 19, 1910.

(Signed) MANUEL F. ROSSY.
Counsel for Defendants.

Copy received:

JACINTO TEXIDOR.
Counsel for Plaintiff.

Answer to Cross-complaint.

The plaintiff, through his counsel, Texidor and Cautiño, alleges:

That for the purpose of answering the cross-complaint, and to deny some of the facts set forth in the answer, he makes the following allegations:

First.

The plaintiff denies all and each of the allegations that as new matter appear in the answer, so far as they are contrary to those alleged in the complaint, denying specifically those appearing under numbers one, seven, eight, nine, ten, seventeen and eighteen.

Second.

As to the cross-complaint, the plaintiff denies the allegation appearing under No. 1 thereof, denying likewise the whole of its contents.

16 Third.

The plaintiff, Elzaburu, denies the allegation which appears under No. 2 of the cross-complaint.

Fourth.

As to allegation No. 3 of the cross-complaint, the plaintiff and counter-defendant denies that the defendants, the Chaves, have ever converted any possessory title into a dominion one with reference to the estate therein referred to, and admits the existence of the judgment of the District Court of San Juan, dated May 31, 1907, and further alleges that said judgment is a final one and has settled the matter of the ownership and lawful possession of the 50 cuerdas described in the complaint, which was rendered in a suit brought between the same parties to this action.

The plaintiff makes the specific allegation of res judicata as to these allegations of the cross-complaint.

For the foregoing reasons the plaintiff, Pedro de Elzaburu, prays the court to render judgment in his favor and against the defendants as requested in the complaint, and to dismiss the cross-complaint.

San Juan, P. R., March 23, 1910.

(Signed) TEXIDOR AND CAUTIÑO,
Counsel for the Plaintiff.

Notice.

On March —, 1910, notice and copy were served on counsel for the defendants, who signed this notice.

MANUEL F. ROSSY,
Counsel for the Defendants.

Ruling in Regard to Demurrers.

Under date of February 1, 1910, and on page 117 of book 12 of the minutes of this court, there appears one which reads as follows:

17 "The court made an order in this case overruling the demurrers to the complaint and granting the defendants ten days to answer the same".

Decision.

In open court and in the order in which it was entered on the calendar, this case was called for trial on March 24, 1911, and both

parties, through their respective counsel, appeared and declared that they were ready for the trial. In view thereof said parties read their allegations, introduced their documentary evidence and reproduced the parol evidence which they introduced at the hearing held on December 9, 1910 before the judge who then presided — this court. The court admitted said evidence in accordance with the authorities cited in the addition made to its opinion. The parties finally decided to submit the arguments in the case in writing, a term being fixed therefor, within which only those of the plaintiff were filed.

The court, considering said allegations and evidence, and in accordance with the separate opinion presented, sustains the complaint, and consequently, that the possessory proceedings instituted by Paula Chaves in 1895, and recorded in the Registry of Property of San Juan, P. R., in regard to an estate hereinafter described, is null and void, as well as the record thereof, and that Pedro de Elzaburu y Vizcarrondo is the lawful owner and possessor of the 50 cuerdas of land involved in this suit, which 50 cuerdas form part of an estate of 112 cuerdas also owned by the plaintiff, Elzaburu, the description of said 50 cuerdas being as follows:

"Fifty cuerdas of land situated at Honduras, ward of Sábana Llana, Municipality of Río Piedras, bounded on the North by Lands of José Fernández Villamil; on the South by lands of Serapio Gómez; on the East by the road to Trujillo Alto; and on the West by lands of Laureano Rosario".

It is further ordered that said defendants shall not execute any act tending to disturb the plaintiff, Elzaburu, in his pos-
18 session, and that the former shall pay the costs and expenses that might be justified.

The Secretary shall issue the proper order of execution.

Rendered in open court this 2nd day of August, 1911.

Entered August 3, 1911.

(Signed) FÉLIX CORDOVA DÁVILA, *Judge.*

Certified.

A. MARON MARIEN, *Secretary.*

Notice of Appeal.

The defendants, Genara, Gregoria, Rafaela and Juan Clemente Chaves, through their counsel, Manuel F. Rossy, state that they appeal to the Supreme Court of Porto Rico from the judgment rendered in this case by the District Court on the 2nd instant.

And they show below that they have sent a copy of this notice of appeal to counsel for the plaintiff.

San Juan, August 31, 1911.

(Signed) MANUEL F. ROSSY,
Counsel for Defendants and Appellants.

I, Manuel F. Rossy, counsel for the defendants in this case do hereby declare:

That a copy of this notice of appeal has been mailed by me to-

day in an envelope addressed to Jacinto Texidor, counsel for the plaintiff, who, according to my information, is absent from this city.
San Juan, August 31, 1911.
(Signed) MANUEL F. ROSSY.

Subscribed and sworn to by Manuel F. Rossy, lawyer, of age, and a resident of this city, whom I know personally.
19 San Juan, August 31, 1911.
(Signed) D. BIASCOECHEA,
Deputy Secretary of the District Court.

Filed Secretary's Office, August 31, 1911.
(Signed) D. BIASCOECHEA,
Deputy Secretary.

20 In the District Court of San Juan, Section 1.

No. 3014.

PEDRO DE ELZABURU
v.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES.

Statement of the Case.

On December 9, 1910, this trial was held, counsel for both parties appearing and stating that they were ready for trial.

Plaintiff's Evidence.

Documentary.

1.

Deed drawn by Notary Mauricio Guerra, dated October 17, 1898, whereby the Secretary of Finance of the Insular Government of Porto Rico sells in the name of the State to Pedro de Elzaburu an estate situated in the ward of Sábana Llana, place denominated Honduras, Río Piedras, composed of 112 cuerdas, equivalent to 44 hectares, 17 ares and 16 centares, and bounded on the North by lands of Frutos Caloca and Juana Rivera; on the South by lands of Atanasio Vargas, Julia Zayas, formerly María Reyes, Prudencio de la Cruz and the Estate of Luis Vázquez; on the East by lands of Ignacio Llompart, Valentin Rondón, the Estate of Juan Hernaiz, Prudencio de la Cruz, formerly José de la Cruz, and María de la C. Andino; and on the West by lands of Anastasio Vargas and Laureano del Rosario. This property was adjudicated to Juan Manuel Cuadrado on October 15, 1897, for six hundred pesos payable in ten instalments, one each year, and on October 16, 1898, cession of the said adjudication or award was made to Pedro de Elzaburu,

who, on the same day, paid to the Treasury sixty pesos, the
21 amount of the first instalment. By means of this deed the Secretary of Finance conveyed to Elzaburu the possession and ownership which by adjudication were given to the State, such as they were possessed by the vendor, and the same were recorded in the Registry with their appurtenances and rights. This deed was recorded on folio 239 (over), book 9 of Río Piedras, No. 503, second entry.

2.

Certificate from the Registrar of Property, of the first entry of the estate described in the aforesaid deed, which was in favor of the Spanish State which declares that it is the owner of the property by virtue of an attachment or adjudication made thereto in the proceedings prosecuted against Alonso Hernández as Collector at Caguas, for the purpose of collecting from him the sum of seven thousand seven hundred seventy-six pesos and sixty-two cents which were claimed from him. Said adjudication was effected on July 5, 1895, possession of the land being recorded in the Registry in favor of the State without prejudice to third parties who might have better title to the property, on September 14, 1895. There exists a marginal note which says that from said property four cuerdas were segregated in an exchange with Natalio Morales Mundo, which is recorded on folio 160 of Book 14 of Río Piedras, No. 337, first entry, said note bearing date of November 5, 1903.

3.

Copy of an original document of 1836 appearing in the protocol of Cangrejos, issued by the keeper of the General Archives of protocols of the Notarial District of San Juan, which contains the following particulars:

A. A writing addressed to the Alcalde Mayor by José Concepción de Castro as testamentary executor of his mother Eugenia de la Cruz, stating that this lady together with her brother José
22 inherited from her grandparents lands in Honduras, Río Piedras, which she sold in 1819 to Juana María de Otero, who has since then utilized the same without deed. His mother having died he desires to institute proceedings to justify that she inherited said estate and that it was later sold to Mrs. Otero.

B. Decree signed by Licentiate Becerra and Pedro Rafael Escalona, in Porto Rico, on February 20, 1836, directing that the request be complied with and that the owners of the adjoining lands be cited as well as the Síndico Procurador General.

C. Writ from the court to Lieutenant Aguerra, of Cangrajos, directing him to make the investigation requested by Castro.

D. Writ from said Lieutenant Aguerra directing compliance with the orders of the Alcalde Mayor of San Juan, and that citation be served through Lieutenant Aguerra of Río Piedras, on the owners of adjoining estates, who, according to information, are Martina Andino, Hilario Benítez and José de la Cruz.

E. On April 8, 1836, Lieutenant Aguerra, of Cangrejos, pro-

ceeded with the justification of Castro, José de la Cruz, a brother of Eugenia de la Cruz, the vendor, having testified that he inherited together with his sister and from their grandparents, in equal shares, a property in Honduras, Río Piedras, and that Eugenia de la Cruz held her half for over twenty years and until she sold the same to Juana María de Otero in 1819; and that he as owner of the adjoining property has for some years known Juan Caneti in possession of the property aforesaid although he ignores under what title he possesses the same.

23 Witness Juan José Giménez testified that he knew the estate as the property of the parents of Eugenia de la Cruz and of her brother José, who inherited the same, José having conveyed his share to his sister who sold to Mrs. Otero; that he can make no statement as to Mrs. Otero's possession of the estate because he has for some years seen Juan Caneti managing the same, although he does not know under what title he possesses it.

Juan Gregorio Félix gave the same testimony as Juan José Giménez.

Domingo de Castro testified that the sale to Mrs. Otero is true, but that he ignores whether the latter has possessed said property without opposition since he has not been in Honduras for many years.

Facundo de Castro states that from the time that he was twelve years old up to his twenty-fifth year, he knew the estate in Honduras to be the property of José de la Cruz, the father of Eugenia and José, who inherited the same, José having sold his share to Eugenia, and the latter, as he has heard say, having sold it to Mrs. Otero. Since that time the witness has known nothing more. He has also heard say that Juan Caneti possessed the property but he ignores under what title.

Lieutenant Aguerra finished this investigation and forwarded the same to the court of San Juan which ordered that the owners of the adjacent properties and the Síndico Procurador be heard in the matter. Hilario Benítez, José de la Cruz and Martín Andino, as owners of the properties adjacent to that sold to Mrs. Otero, appeared before Lieutenant Aguerra and stated that they could not make any representations nor take part in the hearing granted them because it was impossible for them to do so, and in view of the citation served on them they waived such hearing.

24 F. The Síndico reports that by the estimony of four witnesses who corroborate each other as to the property of Eugenia de la Cruz, who inherited the same from her parents, and later, some years ago sold it to Mrs. Otero, he sees no reason for approving the investigation; for although the witnesses say that said property is possessed by Juan Caneti, this does not annul the ownership had by Eugenia, and Juana may have leased or sold it to Caneti.

G. Writ of the court of the capital, dated May, 1836, directing that on account of the merits of the testimony taken and the statement of the Síndico, the investigation made for José Concepción Castro to establish his ownership of an estate in Cangrejos, for which the court interposes its authority, be approved.

H. Notary Escalona delivered the original records on the same day to said Castro.

4.

Copy of a deed executed in Cayey on May 5, 1854, before the Mayor of said town, Sebastián Colón, in which the brother and sisters José Saturnino, Isidora, María, Fruta and Daría del Otero, in their own name and for their brothers Bonifacio and Demetrio del Otero, sell to Alonso Maria Hernández an estate in the barrio of Honduras, Río Piedras, which is bounded by lands belonging to the Marchioness de León and to José de la Cruz, and is composed of 140 or 150 cuerdas, the exact number of which will be stated in the deed to be executed for the purpose, as well as the demarcation thereof, when the same is surveyed, for two thousand two hundred pesos cash which they confess having received. Said deed is signed by the brother and sisters José Saturnino, Isidora, María, Daría, and Justa del Otero, and by Sebastián Colón, formerly Lucas Vázquez. The signatures of the witnesses whom the deed states are called Sebastián Porrata, Ramón Pacheco and Felipe Aguero, do not appear.

5.

Certificate issued by Juan Caloca, Mayor of Río Piedras, dated March 23, 1905, stating that on folio 45 (over) of a record made in regard to demarcation, measurement and assessment of the estate belonging to the Collector at Caguas, Alonso María Hernández, there exists a record of the confiscation of said lands by the Central Administration on May 25, 1875, and deposited with Eusebio Chiclana.

6.

Certificate from the Commissioner of the Interior that in the record of the survey, assessment and demarcation of the estate located in Honduras, Río Piedras, given as security by Alonso Hernández to answer for the faithful discharge of his duties as Collector at Caguas, there exists a note relative to measurement and demarcation for the purpose of ascertaining the lands of said estate, which says that to this end there were cited of the thirteen possessors of the parcels appearing on the plan and of the owners of the adjacent property, the occupants of the parcels marked on the plan Nos. 3, 5, 6, 9, 10, 11 and 12, who are María Nieves Andino, Paula Chaves, José Martínez, Francisca Guerra, Teodoro Guerra, Gregorio Chaves and Dionisia Cruz, respectively, who witnessed the demarcation, but filed no documents whatever, José Martínez alone presenting a possessory title dated March 31, 1888, unrecorded. Teodoro Guerra exhibited a receipt for the purchase in 1859, of four cuerdas, but these documents were not admitted. The above-mentioned seven parcels and part of the lands which belonged to José de la Cruz, now Estate of Hernaiz, and to Prudencio de la Cruz, equivalent to 112 cuerdas and 1,921 square yards, may be considered as in fact forming part of the lands belonging to the State, it being proper to order their attachment and sale, or to wait until

the rest of the land is recovered, since it is recorded in favor of its possessors and the judicial annulment of the record will have to be requested. And should the above-mentioned parcels be sold, the State may record the same as its property and direct the demarcation thereof, the boundaries being on the North, lands of Frutos Caloca and Juana Rivera; on the South, lands of Anastasio Vargas, Julia Zayas, formerly María Reyes, Prudencio de la Cruz and the Estate of Luis Vergne; on the East lands of Ignacio Llompart, Valentín Rondón, Estate of Juan Hernaiz and Prudencio de la Cruz, formerly José de la Cruz, and María de la O. Andino; and on the West lands of Anastasio Vargas possessed by Laureano Rosario; the price thereof being ten dollars and fifty-three cents a hectare.

7.

Certificate from the Registrar of Property of San Juan to the effect that an estate of 50 cuerdas in the Barrio of Sábana Llana, place known as Honduras, Río Piedras, equivalent to 19 hectares and 65 ares, bounded on the east by the Río Piedras road; on the north by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; and on the West by lands of Laureano Rosario, having a value of two hundred and fifty pesos and unencumbered, is recorded under date of March 11, 1896, on folio 63 of book 10 of Río Piedras, No. 528, in favor of Paula Chaves y Cruz, widow and resident of Río Piedras, by virtue of possessory title which she obtained in the Río Piedras court, and showing that she has been in possession of said estate since 1875, when she bought the same of Santos Caneti. Such possessory proceedings were carried
27 out upon citation of the owners of the adjacent estates and testimony of witnesses Florencio Cruz and Laureano Rosario, residents and property owners in said town, who stated that they knew as a certainty that Paula Chaves y Cruz possessed said estate from the above-mentioned date. The certificate issued by the Mayor of Río Piedras under date of November 5, 1895, showing that Paula Chaves pays no taxes on said lands because they are unproductive, the court issued a writ of approval on November 7, 1895. There being found in the Registry no entry in contradiction to the aforesaid, possession of said estate is entered in favor of Paula Chaves y Cruz.

8.

Judgment of the District Court of San Juan, dated May 31, 1907, in case No. 341, Pedro de Elzaburu vs. Laureano Rosario, Genara, Gregoria, Rafaela and Juan Clemente Chaves, relative to opposition to the conversion by the latter of the possessory entries of their respective properties into dominion entries. Held: that Laureano Rosario does not possess under title of ownership an estate of 16½ cuerdas situated in Honduras, barrio of Sábana Llana of Río Piedras, because the same forms part of the 112 cuerdas lawfully possessed at that place by Elzaburu, by virtue of purchase from the Spanish State, under deed of October 17, 1898; and that the estate of 50 cuerdas situated at the same place, bounded on the East by the Río

Piedras road; on the North by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; and on the West by lands of Laureano del Rosario, is not possessed by the defendants, the Clemente Chaves, under title of ownership, since it also forms part of the said estate belonging to Elzaburu; and that Rosario as well as the Clemente Chaves have no right to convert the possession recorded of their said respective parcels of land, into domin-
28 ion. The opinion of Mr. Aldrey who was the judge rendering the judgment is attached hereto, said judgment being a final one.

9.

Certificate from the Commissioner of the Interior to the effect that on April 15, 1884, there was made a survey of the estate which belonged to Alonso Hernández in 1854, situated in Sábana Llana, Río Piedras; that in 1892 a new demarcation was made by officer García Saenz; that the property was recorded in favor of the State on September 14, 1895, on folio 239 of book 9 of Río Piedras, No. 503, first entry; that on October 21, 1897, said property was adjudicated to Juan Manuel Cuadrado who bought it at auction on October 15th of the same year, and conveyed it to Pedro Elzaburu, to whom the deed was executed.

10.

Certificate issued by the Treasurer of Porto Rico stating that at the auction held October 15th, 1897, of the property belonging to the State which is situated in the barrio of Sábana Llana, Río Piedras, place known as Honduras, composed of 112 cuerdas and 1,921 square yards, bounded on the North by lands of Frutos Caloca and Juan Rivera; on the South by lands of Anastasio Vargas, Julio Zayas, (formerly María Reyes), Prudencio de la Cruz, and Estate of Luis Vergne; on the East by lands of Ignacio Llompart, Valentín Rondón, Estate of Juan Hernaiz and Prudencio de la Cruz (formerly José de la Cruz), and María de la C. Andino; and on the West by lands of Antonio Vargas, now Laureano Rosario, the land of Juan Manuel Cuadrado for six hundred pesos payable in ten instalments was accepted, he having accepted the conditions of the bill inserted in the Gazette of September 22, 1897, Cuadrado having ob-
29 tained authorization to convey the estate. On October 16, 1898, to Pedro de Elzaburu, for the same amount and under the same conditions, in accordance with the approval of the Secretary of Finance given on the same date, on which Elzaburu paid the first instalment and executed the remaining nine promissory notes. That said property was recorded on September 14 1895; that Elzaburu paid the remaining instalments in October of 1899, 1900, 1901 and 1902, and in November of 1904, thereby balancing his account. On October 17, 1898, the Secretary of Finance executed a deed of said estate in favor of Elzaburu, and for that reason the Treasurer of Porto Rico agrees to cancel the mortgage made on the property to secure payment of the instalment price.

11.

Map of the ground-plan made on February 17, 1902, by José Escudé, of a rural property situated at Honduras, ward of Sábana Llana, Río Piedras, showing and area of one hundred and ten acres, two thousand nine hundred and twenty-three square yards.

Defendants' Evidence.

Documentary.

1.

Certificate from the Registry of Property, dated December 6, 1910, issued in San Juan by Registrar José S. Belaval, to the effect that in the possessory title proceedings instituted in the Municipal Court of Río Piedras by Paula Chaves y Cruz to justify possession of the 50 cuerdas which she has in Sábana Llana, place known as Honduras, Río Piedras, recorded on folio 63 of book 10 of Río Piedras, No. 528, there is a certificate issued by the Mayor, the Secretary and the Síndico of the Municipality of Río Piedras stating that according to the records in the municipal archives of said town, Paula Chaves y Cruz possesses in her own name and under title of ownership an estate of 50 cuerdas, equivalent to 19 hectares and 65 ares, situated in the barrio and place aforesaid, and bounded on the East by the Río Piedras-Trujillo Alto road; on the North by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; and on the West by lands of Laureano Rosario, which property does not appear on the tax-rolls because it is not cultivated.

2.

Tax receipts for 1902, 1903, 1904, 1905, 1906, 1908, 1909 and 1910, showing that Juan Clemente and others paid the taxes for each year above-mentioned upon a real property situated in the barrio of Sábana Llana, Río Piedras, valued up to 1905 at two hundred and eighty dollars, and from 1905 to 1910, at four hundred and eighty dollars.

3.

Decision of the District Court of San Juan, in case No. 341, Pedro de Elzaburu vs. Laureano Rosario, Genara, Gregoria, Rafaela and Juan Clemente Chaves, in re to opposal to a conversion into dominion entry of their respective possessory records, by which decision there was annulled the order issued by said court on November 20, 1907, cancelling Paula Chaves' possessory entries in the Registry of Property of her estate of 50 cuerdas, and that of Laureano del Rosario of his property of 16½ cuerdas, in view of the petition of said parties based on the ground that according to Article 79 of the Mortgage Law in order to annul an entry there is required a judgment of nullity of title. Said decision was rendered March 31, 1908. And the cancellation was ordered by said order of November 20, 1907, on petition of the plaintiff Elzaburu.

31 4.

Judgment of March 31, 1908, rendered by the District Court of San Juan in the case of Pedro de Elzaburu vs. Gregoria, Genara and Juan Clemente Chaves, relative to ejectment from the estate of 50 cuerdas which the defendants hold by virtue of inheritance from their mother, Paula Chaves, and which is situated in Sábana Llana, Río Piedras. Said judgment held that the action of unlawful detainer did not lie.

In the opinion accompanying said judgment it is stated that Elzaburu brought an action for unlawful detainer against the Chaves for the reason that it was a part of his estate of 112 cuerdas, situated in Honduras, Sábana Llana, Río Piedras, which he based on the ground that in his opposition to case No. 341 in re the petition of the Chaves and Laureano del Rosario for the conversion of their respective possessory entries into dominion records, the court had decided that the 50 cuerdas of the Chaves were not in their lawful possession, because they formed part of Elzaburu's estate, this having been decided by judgment of May 31, 1907; and as it appeared that the defendants have a recorded possessory title to the lands from which it is sought to eject them, such an action does not lie because such possessory title has not been declared null by judicial decree.

5.

Judgment rendered by the Supreme Court of Porto Rico on January 12, 1909, affirming the judgment of the District Court of San Juan, dated March 31, 1908, in the action of unlawful detainer mentioned in the preceding paragraph.

In the opinion accompanying said judgment it is stated that whatever may be the scope which Elzaburu desires to give to the decision of the District Court, dated March 31, 1908, relative to the
32 opposition to the Chaves' petition for the conversion into dominion of their possessory record in connection with the 50 cuerdas, which decision, after all, should have been limited by the provisions of paragraph 3 of Article 396 of the Mortgage Law, that is, to declaring the dominion justified or not, the judge committed no error in dismissing the action of unlawful detainer, since he had to consider the special and summary nature of this class of trials, where it is not proper to decide directly or indirectly any question of nullity or of the preference of the titles which each party offers.

6.

Certificate issued by the Secretary of the District Court in regard to the decision of said court dated April 19, 1905, declaring Rafaela, Genara, Gregoria, Juan and Blasina Clemente Chaves, the intestate heirs of their mother Paula Chaves y Cruz, widow of Román Clemente, the former of whom died intestate in Río Piedras on January 9, 1899, because they were the legitimate children of the deceased, said judicial order being a final one.

7.

Certificate issued by the Registrar of Property relative to the entry in favor of Paula Chaves y Cruz, on folio 63, book 10 of Río Piedras,

No. 528, first entry, of her possession of 50 cuerdas situated at the place known as Honduras Sábana Llana, Río Piedras, bounded on the East by the road; on the North by lands of José Fernández Villamil; on the South by lands of Serapio Gómez; and on the West by lands of Laureano del Rosario; said Paula Chaves y Cruz having acquired such land by purchase from Santos Caneti, the same appearing not to be encumbered and worth two hundred and fifty dollars, said entry having been made by virtue of possessory title proceedings instituted in the Municipal Court of Río Piedras,
32a approved by writ of November 7, 1895.

8.

Certificate from the Commissioner of the Interior relative to a communication addressed on May 31, 1895, by the General Administrator of Taxes and Revenue of Porto Rico by order of the Intendant General of Finance to the Mayor of Río Piedras, directing him to take possession in the name of the State, of the property which Alonso Hernández gave as security for the faithful discharge of his duties as Collector at Caguas, which estate is situated in the barrio of Honduras, Río Piedras, and has an area of 44 hectares, 17 ares and 16 centares, equivalent to two hundred and twelve cuerdas 1921 square yards, and is bounded on the North by lands of Frutos Caloca and Juan Rivera; on the South by lands of Atanasio Vargas, Julia Zayas (formerly María Reyes), Prudencio de la Cruz, and the Estate of Luis Vergne; on the East by lands of Ignacio Llompart, Valentín Rondón, the Estate of Juan Hernaiz and Prudencio de la Cruz, formerly José de la Cruz, and María de la C. Andino; and on the West by lands of Anastasio Vargas, which are possessed by Laureano Rosario.

Said certificate also contains a copy of the proceeding taken in Río Piedras on June 5, 1895, in regard to the appearance of the Mayor of Río Piedras with the Secretary of the Municipality at the place known as Honduras of the barrio of Sábana Llana, Río Piedras, in order to comply with the contents of the communication above set forth, in which barrio is situated the estate of 112 cuerdas, equivalent to 44 hectares, 17 ares and 16 centares, that is, 1921 square yards which Alonso Hernández gave as security for the faithful discharge of his duties as Collector at Caguas, and which
33 property is bounded on the North by lands of Frutos Caloca and Juana Rivera; on the South by lands of Atanasio Vargas, Julia Zayas, formerly María Reyes, Prudencio de la Cruz, formerly José de la Cruz, and María de la C. Andino; and on the West by lands of Anastasio Vargas, now Laureano del Rosario; the said Mayor having attached the property in the name of the State.

9.

Certificate from the Commissioner of the Interior relative to the following points which appear in the record of the defalcation by the Collector at Caguas, Alonso Hernández:

1. Copy of the deed already stated under No. 4 of the plaintiff's evidence.

2. Communication from Surveyor Manuel Hernaiz, dated March 15, 1886, to the General Administrator of Taxes and Revenue, stating that in compliance with the letter of said Administrator dated February 23 last, he proceeded to Río Piedras, where, at the town hall, he was given all the antecedents and information relative to the estate of Collector Hernández, among which is the copy of the deed of the Otero brothers executed to Hernández in Cayey; and the record of the demarcation, made last year by the Mayor and Geometrician Viera along with the owners of the property adjacent to that occupied by María Chaves and the witnesses Santana and Llompart. That the deed gives no courses or distances but only data of the boundaries at the cardinal points, wherefore it is impossible to estimate whether in making the sale to Hernández in the year '56, there existed the land mentioned in the deed; but in the record of the demarcation there are found the courses and points which must serve as guide in the survey, upon which the owners of the adjacent properties, with the exception of María
34 Chaves, who occupies and utilizes the land attached by the Treasury which she bought from the Estate of Caneti, showing a receipt for the payment of various sums, agree. That he proceeded to make the survey and demarcation of the land comprised in the record of survey from which he made an annotated plan showing 34.23 cuerdas, that is, one-fourth of the land which appears to have been sold to Collector Hernández. To ascertain the truth a general investigation of the titles of adjacent owners should be made.

3. Communication addressed to the Mayor of Río Piedras on August 11, 1892, by the Intervenor of the State Administration of Porto Rico, stating that the Intendant has agreed that in order to estimate the legality of the titles presented to the Forest Engineer on making the demarcation of the estate of Collector Hernández, said owners must deliver such possessory titles as they may have, for their examination. Said owners are María Nieves, Santa Chaves, José Martínez, Francisco Guerra, Teodoro Guerra, Gregorio Chaves, Dionisia Cruz, Juana Rivera, Laureano Rosario, Valentín Rondón, Sebastián Llompart, Frutos Caloca and Ingnacio Llompart.

4. The Mayor of Río Piedras cited said owners, and there appeared Laureano Rosario and also Gregorio Chaves who stated that the receipt he had to show the acquisition of his land was destroyed by fire the year before last.

5. Report of the Engineer relative to demarcation and survey to ascertain the lands that belonged to Collector Hernández in the barrio of Honduras, now Sábana Llana, of Río Piedras, who says the following:

That he made a study of the investigation relative to the defalcation occurring in 1854, which informed him of the fact that the lack of data in reference to the boundaries and situation of the land was the cause due to which the different demarcations that it was tried to make so that the State might recover the land
35 affected as security for the defalcation, were unsuccessful; that the attachment by the Mayor of Río Piedras in the

name of the State, which was more of an attempt than a real attachment, was levied on forty or fifty cuerdas only, it being stated that Hernández had never been known as a land-owner in that section; that the attached lands belonged at one time to Juan Otero who lived thereon about 1820, at which time, in changing his residence to Caguas, he left Juan Caneti in charge of the property, the latter possessing the same to the time of his death, his son having later sold it to Clemente, the husband of Paula Chaves, who possessed them at the time of the attachment; that neither from said record of the attachment nor from the Otero's deed dated May 5, 1854, nor from the plan of the demarcation dated March 1886, the only one known as to the carrying out of any transaction though limited to 34 cuerdas, which are a part of those occupied as hers by Paula Chaves, can there be deduced any clear data on which to affirm which were the real lands of Hernández; since the Otero's deed only gives as a boundary the lands of the Marchioness de León and José de la Cruz, without determining the section nor the points or angles which form its sides and only speaks of the approximate area of 140 to 150 cuerdas; that he made the demarcation of the whole section where the lands should be located so that in view of such demarcation and of the titles of the owners he might come to a knowledge of the lands once possessed by Hernández; that for the above purpose the owners were cited and the operations were carried out, with the following result: The occupants of parcels 3, 5, 6, 9, 10, 11 and 12, who are María Nieves, Paula Chaves, José Martínez, Francisco Guerra, Teodoro Guerra, Gregorio Chaves and Dionisia Cruz, submitted no legal documents whatever, for which reason said seven parcels may be considered as part of the 112 cuerdas 1,921 square yards, and their attachment and sale effected.

36 6. Communication addressed by Pedro de Elzaburu to the Secretary of Finance, dated April 5, 1899, stating that in order to reimburse the amount embezzled by Collector Hernández, an estate belonging to him was adjudicated to the State, said property being located at the place known as Honduras, of the barrio of Sábana Llana, Río Piedras. That said property was adjudicated to Juan Manuel Cuadrado, who, upon authorization from the Department of Finance, conveyed the same to the undersigned, Elzaburu, for which reason the Secretary of Finance executed to him a deed dated October 17, 1898, which is recorded in the Registry of Property. Under such circumstances it has been impossible for the petitioner, as it was for his assignors, to take possession of the property on account of the opposition of various persons who allege that they have possessory titles; and as the Department of Finance is bound to give the petitioner real dominion of the estate, he re-que-ts that possession thereof be given him and that the trespassers be dispossessed.

As a consequence of this communication, Official Manuel Montoto reported on September 24, 1899, to the Chief of the Bureau of Internal Revenue, as follows: That Elzaburu requests that he be given possession of the land ceded to him by Cuadrado; that upon

examining the record it is found that on June 5, 1895, the Mayor of Río Piedras seized the estate of 112 cuerdas; that a communication be addressed to the Mayor of Río Piedras directing him to proceed to the estate and require from the trespassers the documents on which they base their title; and that the record containing the deed of security and the data necessary for the ejectment of such trespassers be requested from Mayaguez.

As a result of this report the aforesaid record was sent for to
37 Mayaguez, and the same was forwarded by the Collector at Mayaguez to the Civil Secretary on October 16, 1899, the said Secretary having forwarded it to the Chief of the Bureau of Internal Revenue on October 20th of the same year, the latter having forwarded the record on the same day to Official or Chief Montoto.

And after these steps relative to the communication of Elzaburu requesting possession of the land in Sábana Llana, nothing else appears in said record, all of this certificate having been issued by the Commissioner of the Interior in view of the petition of Attorney Rossy, on December 7, 1910.

10.

Certificate from the Secretary of the Municipality of Río Piedras, also signed by the Mayor thereof, Juan Caloca, stating that in the minute book of the Municipality of Río Piedras, which was begun on October 12, 1898, on which date the American government took possession of said town, there is an entry stating that in Río Piedras at 12 M. on October 12, 1898, Lt. Col. Huide Koper, who comes in representation of the government of the United States to take possession of the town and hoist the American flag, being in the town hall, and there being present Municipal Councilmen Manuel González, Manuel Díaz, Antonio Alvarez, Manuel Prida, Ramón Silva and José Joglar, under the presidency of the Mayor, Enrique Acosta, due respects were paid to said officer and that act was carried out with the proper formalities, the municipal council saluting the new government to which it will lend loyalty and obedience, expecting in exchange the assurance of order and welfare necessary to communities in reaching progress and development. All the parties present signed said minutes.

11.

Certificate of the judgment rendered by the former District Court of San Juan on April 16, 1902, in the case of Pedro de Elzaburu
vs. Juan Mollfulleda relative to the dispossession from 15
38 hectares 66 ares and 55 centares possessed by the latter and which Elzaburu affirms from part of the estate of 112 cuerdas sold him by the Spanish Government under deed of October 17, 1898. Such decision was in favor of Elzaburu and sentenced Mollfulleda to vacate and leave the said lands at the disposal of Elzaburu.

12.

The plaintiff accepted the allegations marked with the numbers 4, 11, 15, 16 and also 13, of the new matter of opposition to the complaint.

Parol Evidence.

The following witnesses testified for the defendants:

1. JUAN CLEMENTE, that he is 25 years of age, a resident of Sábana Llana, Río Piedras, living on Paula Chaves' estate of 50 cuerdas, which to-day belongs to the witness and his sisters Genara, Gregoria and Rafaela Clemente Chaves all of whom live on said property, as owners thereof, the witness and his sisters working the same; that Pedro Elzaburu once visited said estate, after the American bombardment, for the purpose of informing the witness that that property was his, but the witness has never recognized him as the owner: that the witness and his sisters were born on said estate which formerly belonged to Santos Caneti who sold it to Clemente and Paula, parents of the witness and his sisters, and that they bought the same before the hurricane of San Narciso, Paula having lived on the land as the owner thereof, and that after her death the wi-ness and his sisters have continued to live on the property as its owners, no one ever having dispossessed them thereof, and that since the Americans came to the island the witness has declared the land as belonging to him and to his sisters and that it is he who since then has paid the taxes and that the receipts filed in this trial are the tax-receipts for the years 1902-1910, which the witness has paid and which
39 correspond to the estate of 50 cuerdas bounded by lands of José Villamil, by the Río Piedras road, by lands of Laureano del Rosario and by lands of Goyo Andrade; that the witness has no title other than the possessory title obtained by his mother, Paula, and that no one has up to date lived on said property except the witness and his sisters, as owners thereof after the death of Paula.

2. LAUREANO DEL ROSARIO testified that he is a resident of and property owner in Sábana Llana, where the estate of 50 cuerdas belonging to Paula Chaves is located; that he has known said estate for 33 or 34 years; that it is adjacent to his own property, and that he knows that it was hers because he took for her the steps necessary to obtain the possessory title and has on some occasions and upon her request paid the taxes for her, for which purpose she gave him the money; that she bought the land of Caneti, who had given Román Clemente, the husband of Paula Chaves, charge of the estate, the same coming to him later and upon his death to his wife Paula; that Paula died on said property and that it was she who cultivated and governed it; that after her death, her children, Juan, Rafaela, Gregoria and Genara have continued to possess the same, they being at present on the land as owners thereof, cultivating and governing the same; that the witness has never seen any other person there as owner of the property, nor does he know that it belongs

to any other person, and that he [illegible] seen Elzaburu thereon; that the taxes are to-day paid by Juan Clemente and this is known to him because when he was notified to go and pay his taxes the Collector charged him with notifying said Juan; that the estate is at present inhabited and cultivated by the Chaves.

On cross-examination by the plaintiff he says that he remembers that a case was brought by Elzaburu against the witness and the Chaves, a judgment having been rendered holding that the
40 estate of 50 cuerdas did not belong to the Ch-ves; but that it never belonged to Elzaburu, and that he does not know the result of the suit; that the property of the witness consists of 6½ cuerdas apart from the 50 cuerdas, which Elzaburu also claims as his; and that Elzaburu told the witness that said land was his.

Being again questioned by the defendants the witness states that said property of 6½ cuerdas is now possessed by him; that he has never known in Sábana Llana any person called Alonso Hernández as owner of any land in that section, nor any property which belonged to the Oteros; that neither has he heard this in the section nor known any land belonging to Hernández, adjacent to his.

3. PLÁCIDO CLEMENTE testified that at the time of the cholera epidemic which took place about 1855, he was 26 years of age and already lived in Sábana Llana where he has resided to the present date; that he knows the Chaves property which first belonged to Juan Caneti and later to Santos Caneti whom he knew on said lands which the witness*ed* measured in the year 1867, Santos Caneti then being the owner thereof, the same later coming to the power of Román Clemente, the husband of Paula Chaves; that it came into the power of Román Clemente, to whom Santos Caneti sold it, in 1867, and that for this reason the witness measured the estate together with Chiclana and Santos Caneti; that when the measurement was terminated, Román Clemente delivered a sum of money to Caneti on account of the sale of the land; that at present the children of Román and Paula are in possession of the land, the latter having died about eleven years ago, said children being called Juan, Genara, Gregoria and Rafaela Clemente Chaves, and that they manage said estate as
41 owners thereof and also pay the taxes thereon, Juan making the payments; that he has not known Elzaburu as the owner of said property of the Chaves; that he did not know Alonso Hernández in possession of any land in Sábana Llana, nor did he know the Oteros.

Cross-examined by the plaintiff, he declared that he was a third cousin of Juan Clemente's, and that they do not live together.

4. JOSÉ CHICLANA testified that he has lived for sixty years on the Sábana Llana boundary line; that he knows the Chaves property, where there live as owners thereof, Juan, Genara, Gregoria and Rafaela; that he knows that Román Clemente, their father, bought said property from Santos Caneti, son of Juan Caneti, and that said estate was sold to Clemente on instalments, and that until Román had paid for the same he did not build the dwelling-house thereon,

having built only a hut in which he lived; that Róman and his wife Paula, first, and afterwards *there* children, are the persons who have cultivated and managed the estate as owners thereof, and that he has known no other owner of said property; that the sale of Caneti to Román was made before the hurricane of San Narciso and that since then they have lived there, and that he has known no other owner of said lands; that he has not known Elzaburu there managing the estate, nor has he known Alonso Hernández nor José Saturnino Otero as owners of land in Sábana Llana.

5. José Clemente testified that he is seventy years old and has always lived in Sábana Llana, having been a cousin-german of the father of the Chaves, whom he knew first, at the house of Juan Chiclana and later on the lands of Caneti, from whom said Román bought the same on instalments, uncle Eusebio having been formerly in charge of the estate, and that it was he, Uncle Eusebio, who took the steps toward the sale of the estate by Santos Caneti to Román; that Román lived there as the owner until his death when he
42 was succeeded by his wife Paula, and the children who live there and whom he considers as the owners because they inherited the property from their father, and they now manage and cultivate the property, the witness not having known any other owner of such estate; that he did not know Alonso Hernández as a landowner in Sábana Llana.

Answering questions of the judge, he states that he knows Elzaburu and has some times seen him in said barrio.

The plaintiff introduced evidence in rebuttal.

The plaintiff, Pedro de Elzaburu, testified that after the execution of the deed in his favor by the State at the beginning of 1900, he went to the estate in the company of his two brothers, the Mayor of Río Piedras, Laureano del Rosario, Genaro Sobrado and José Venega, and having notified all the adjacent property owners that he was going to take possession of the estate, only those mentioned appeared. Caloca represented Villamil, and González, the husband of Laura García, one of the owners of adjacent property, was there; that he called at the house of the Chaves, who knew that the auction had taken place and that the witness was the purchaser, and who expressed their grief because they had to leave the land, having delivered to the witness a certificate of their possessory record in the Registry; that he went to the house of Laureano del Rosario who aided him in ascertaining the boundaries and handed him his possessory certificate, telling him that of the 16 cuerdas he had sold some, and before whom he spoke to González in regard to the marking of the boundary line; that on the next day Rosario came to San Juan and consulted Attorney López Landrón and that the witness was called to the consultation, Rosario having become convinced that he had no right, recognizing the witness, before López Lan-
43 drón, as the owner. He afterward sued Mollfulleda, which suit was adjudged in favor of the plaintiff, and the ejectment

having been decreed, he went to take possession of the estate accompanied by the judge, the secretary and the marshal, the owners of the adjacent property having been cited, Mollfulleda and Clemente Chaves being there. The Department of Finance ordered a demarcation of the land, and of said demarcation and survey a certificate was given to the witness when he instituted his suit against Mollfulleda, with which certificate Escuté made a plan of the estate. Said certificate has disappeared, but the witness has a copy thereof.

Cross-examined by the defendants he says that he knows the facts on which he has just testified in his character of owner, by virtue of the auction of the Intendancy, and that he has had intervention in those records as an employee of the Administration of Taxes, up to the time the estate was recorded in the Registry, for which reason he knows the record in all its details. He sued Mollfulleda to recover 39½ cuerdas; he now claims of the Chaves 50 cuerdas and from Laureano 16½ cuerdas. The witness states that he has possession of all the land and opposes the Chaves cutting wood and has a person in charge of the property, and that he pays taxes on the total of 112 cuerdas.

JACINTO TEXIDOR is the plaintiff's counsel, and states that the document to which Elzaburu referred in his testimony is a certificate issued by Ramón García Sain, Forest Assistant, relative to the demarcation of seven parcels marked by their numbers in the general plan drawn. The witness has had the original certificate in his power, and the same was introduced in the suit of Elzaburu vs. Mollfulleda. This copy was made by a clerk of the witness and was carefully compared, and he believes it is a faithful and exact
44 copy. The witness and Elzaburu have searched for the original, but have been unable to find it.

The judge admitted said document as secondary evidence, the same being described as follows:

Copy of a certificate from the forest assistant Ramón García Sains, stating that the demarcation of the seven parcels numbered 3, 5, 6, 9, 10, 11 and 12, of the general plan of demarcation to ascertain the lands hypothecated to the Department of Finance by Collector Hernández, and which were respectively occupied by María Nieves Andino, Paula Chaves, José Martínez, Francisca Guerra, Teodoro Guerra, Gregorio Chaves and Dionisia Cruz, considered as a whole, was made by him in April 1892 under instructions from the Intendant General of Finance, beginning at the margin of the road running to Trujillo Alto at the point where it meets the lands belonging to Llompart and after following all the courses and returning to the point of departure, gave an area of 44 hectares, 16 centares, or 112 cuerdas 1,921 square yards, the following being the four points: North, Frutos Caloca and Juana Rivera; South, Anastasio Vargas, Julia Sayas y Andino, formerly María Reyes, Prudencio de la Cruz, and the Estate of Luis Vergne; East, Ignacio Llompart, Valentín Rondón, Estate of Juan Hernaiz, Prudencio de la Cruz, formerly José de la Cruz, and María de la O. Andino; and West, Anastasio Vargas and Laureano Rosario. Said certificate was issued at the request of Pedro de Elzaburu on January 6, 1902.

Such is the project of the statement of the case submitted to the approval of the court.

San Juan, November 17, 1911.

(Signed) MANUEL F. ROSSY,
Counsel for Defendants.

45 Copy received:

(Signed) JACINTO TEXIDOR,
Counsel for Plaintiff.

46 In the District Court of San Juan, Section 1.

No. 3014.

PEDRO DE ELZABURU
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES.

I, Félix Córdova Dávila, Judge of the District Court of San Juan, Section 1,

Certify: That the preceding statement of the case, in which all the documents necessary and pertinent to this appeal are included, is complete, true and correct and that such appeal was perfected within the period fixed by law; therefore, it is hereby ordered that said statement of the case be included in the record of the action above mentioned.

Given under my hand in San Juan, Porto Rico, this 19th day of December, 1911.

(Signed) FÉLIX CÓRDOVA DÁVILA,
District Judge of Section 1.

47 In the District Court of San Juan.

PEDRO DE ELZABURU
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES.

Certificate.

We, Jacinto Texidor, as counsel for the plaintiff and respondent, and Manuel F. Rossy, as counsel for the defendants and appellants,

Certify: That the preceding copy of the judgment-roll and of the statement of the case, for the purposes of this appeal, is a faithful and exact copy of the original filed in the record of this case in the office of the Secretary of the District Court of San Juan. In witness whereof we so certify and sign in San Juan on January 17th, 1912.

(Signed) MANUEL F. ROSSY,
Counsel for Appellants.

(Signed) J. TEXIDOR,
Counsel for Respondent.

I have received a copy of the whole record of this appeal.
San Juan, January 17, 1912.
(Signed) J. TEXIDOR,
Counsel for Respondent.

48 In the Supreme Court of Porto Rico.

No. 799.

PEDRO ELZABURU, Plaintiff and Appellee,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Appellants.

Motion.

The appellants and the appellee through their counsel Manuel F. Rossy and Jacinto Texidor, appear before this Honorable Court and respectfully allege:

That at the request of counsel for the respondent they have agreed to file a complete copy of the opinion and judgment dated March 8, 1907, which is summarized in the statement of the case; the parties, however, understand that for the greater clearness of the case it is convenient to file a full copy. And so it is done.

Praying the Honorable Court to admit such copy for addition to the transcript of the record.

San Juan, P. R., April 12, 1912.
(Signed) J. TEXIDOR,
Counsel for Appellee.

MANUEL F. ROSSY,
Counsel for Appellants.

49 No. 341.

PEDRO DE ELZABURU, Plaintiff,
vs.
LAUREANO ROSARIO, GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants.

In re Opposition to Conversion of Possessory Records into Dominion. Joined Actions.

Judgment.

On May 8, 1907, and in open court, this case was called for trial in its calendar order, and the parties appeared through their counsel announcing that they were ready for trial. Thereupon the plaintiff, through his counsel, read his allegations, counsel for all the defendants having afterwards done the same. Then the said parties introduced their evidence in the same order, which was duly taken.

Finally, the parties submitted the case under written briefs which were properly filed.

And the court, considering these allegations, evidence and written arguments, and for the reasons set forth in its opinion which has been made a part of the records, holds that the facts and the law are in favor of the plaintiff and against the defendants in this case, and, therefore, that Laureano del Rosario is not in the quiet and peaceful possession under title of ownership, of the estate of 16½ cuerdas, situated at the place known as "Honduras", ward of Sábana Llana, Río Piedras, P. R., which is bounded on the East by lands of Paula Chaves; on the North by lands of Laura García, and that said property forms part of an estate of 112 cuerdas lawfully possessed by Pedro de Elzaburu, by virtue of a purchase made by him
50 from the Spanish Government by public deed, on October 17, 1898; that the estate of 50 cuerdas situated in Sabana Llana a ward of Rio Piedras, leads to Trujillo Alto; by the North with José Fernández Villamil; on the South, by lands of Serapio Gómez; and on the west, by lands of Laureano del Rosario, is not in the possession of Genara, Gregoria, Rafaela and Juan Clemente Chaves, under title of ownership, quiet and peacefully, and that this estate forms part of the aforesaid estate of 112 cuerdas belonging to Elzaburu, and that said Elzaburu is in the lawful possession of the said fifty cuerdas described; and that neither Laureano nor the heirs of Paula Chaves, to wit: Genara, Gregoria, Rafaela and Juan Clemente Chaves, have any right to convert into dominion the possession which they have respectively recorded of 16½, and 50 cuerdas of land in said wards.

The costs are taxed against the defendants in equal parts, that is, one half against Laureano del Rosario and one half against the defendants.

Rendered in open court on the 31st day of May, 1907.

Entered this 5th day of June, 1907 under date of June 1st. of the same year, when it should have been entered according to law.

(Signed) PEDRO DE ALDREY,
Judge, Section 1.

Certified:

JOSÉ FIGUERAS, *Secretary.*

I, Alberto Marín Marién, Secretary of the District Court for the Judicial District of San Juan, P. R.,

Certify: That the foregoing are true and faithful copies
51 of the originals appearing in the record of this case, to which I refer, the first being a copy from the said record and, the second which is the judgment, from judgment book No. 2, folios 92 to 94, the judgment being final.

And to deliver it to the interested party, I issue the same in San Juan, P. R., this 28th day of April, 1910.

(Signed) A. MARÍN MARIEN,
Secretary of the District Court of San Juan.

We, Manuel F. Rossy and Jacinto Texidor, Counsel for appellants and appellee, respectively, in civil case No. 799 of this Supreme Court, Pedro de Elzaburu vs. Genara, Gregoria, Rafaela and Juan Clemente Chaves, certify that the foregoing is a faithful copy of the original which appears in the record of the case.

San Juan, P. R., April 12, 1912.

(Signed) JACINTO TEXIDOR.
(Signed) MANUEL F. ROSSY.

52 In the Supreme Court of Porto Rico.

(No. 799. Decided March 4, 1913.)

PEDRO ELZABURU, Plaintiff and Respondent,
v.
GENARA CHAVES et al., Defendants and Appellants.

Appeal from the District Court of San Juan, Section 1.

Mr. Justice del Toro delivered the opinion of the court.

This case involves the ownership of a certain parcel of land, the nullity of a possessory title proceeding and the record thereof in the registry.

The plaintiff alleges that the parcel of land claimed is a part of a property which was sold to him by the Spanish Government and that the possessory title proceedings instituted by the ancestor of the defendants are false and should be declared void. The defendants deny the right of the plaintiff and allege on their part that they are the lawful owners of the lands in dispute under purchase title acquired from Santos Caneti in 1875; that subsequently they established their possession and had the same recorded in their favor in the registry in the year 1896.

After an examination of the allegations and the evidence, the District Court of San Juan, Section 1, rendered judgment on March 24, 1911, deciding the case in favor of the plaintiff. A statement is made in the judgment that the same was rendered in accordance with the opinion delivered in the case, but notwithstanding this fact the opinion has not been sent up to this court. We have stated on another occasion that even though the opinion is not neces-
53 sarily a part of the record, it is good practice to include it in the same in order that the Supreme Court may be better informed.

This being an action of ejectment to recover title to real property, it devolves upon the plaintiff to prove at the outset that he is the lawful owner of the lands claimed and now in possession of the defendant.

On September 14, 1895, the Spanish Government recorded the possession of the following real property without prejudice to third persons who might have better title:

"Tract of land situated at a place known as Honduras, in barrio Sabana Llana, district of Rio Piedras, P. R., consisting of 112

cuerdas, equivalent to 44 hectares, 17 ares and 16 centiares, bounded on the north by lands of Frutos Galoca and Juana Rivera; on the south by lands of Laura García, formerly of Atanasio Vargas, Julia Zayas, Prudencio de la Cruz and the Succession of Luis Vázquez; on the east by lands of Ignacio Llompart, Valentín Rondón, Succession of Juan Hernáiz, Prudencio de la Cruz and Maria de la O. Andino, and on the west by lands of Atanasio, or Anastasio, Vargas, later of Laureano Rosario."

Said property was sold at auction on October 15, 1897, for $600, payable in 10 yearly instalments, and was acquired by Juan Manuel Cuadrado who assigned his rights to the plaintiff, Pedro de Elzaburu, on October 16, 1897; on the same day Elzaburu paid the first instalment into the Treasury and discharged the other instalments later. On October 17, 1898, the Secretary of the Treasury of the Insular Government of Porto Rico on behalf of the Government executed a deed of sale before a notary public, which
54 deed was duly recorded in the registry in favor of Elzaburu.

But on attempting to take actual possession Elzaburu found the property occupied by different parties, among them Paula Chaves, defendant's ancestor. Thereupon Elzaburu addressed a communication to the Secretary of the Treasury under date of April 5, 1899, stating that he had been unable to take possession of the property, as his assignor had been also, on account of the opposition of several people claiming to have possessory titles, for which reason he asked the department to eject the trespassers and put him in possession of the property.

As a result of this communication the chief clerk of the department reported to the chief of the Bureau of Internal Revenue the facts connected with the case and suggested that the mayor of Río Piedras be commissioned to go upon the property and put the purchaser in possession. There is nothing in the certified statement issued accordingly to show what action was taken by the Government or the result obtained therefrom. But judging from the testimony given by Elzaburu at the trial, it seems that the commission was in fact given to the mayor. The plaintiff testified that during the first part of 1900 he went upon the property accompanied by the mayor of Río Piedras and other persons to take possession of the premises, the adjoining owners being summoned; that "he called at the house of the Chaves family, who knew that the public sale had taken place and that the witness was the successful bidder, and who expressed to him their regret at leaving the place and handed over to him a certified copy of the record of their possessory title."

55 In his testimony Elzaburu seems to have maintained that he was in actual possession of all the land sold to him by the Government, but that fact is neither in harmony with this action of ejectment nor with the action of unlawful detainer brought by him formerly, nor with the other evidence taken showing that formerly Paula Chaves and now her heirs have been in possession of the lands claimed for many years as the owners thereof and have had their possessory title recorded in the registry of property since March 11, 1896.

Before entering upon the consideration of whether or not the Spanish Government ever acquired any right of ownership to the lands disputed and conveyed it to Elzaburu, we will refer to two civil actions between the same parties litigating the same property herein referred to.

Both actions were of a special character. The first was a proceeding instituted by the heirs of Paula Chaves to convert their possessory title into a dominion title, which proceeding Elzaburu contested and in which a final decision was rendered denying the request of the petitioners. The second was an action of unlawful detainer brought by Elzaburu against the said heirs in which judgment was rendered against the plaintiff on the ground that it was not the proper action under the facts alleged.

In view of the foregoing the conclusion is easily reached that neither of said decisions is res judicata in respect to this case, which should be decided upon the merits of the allegations and the evidence introduced at the trial.

We will now enter upon an examination of plaintiff's title. Whatever right of ownership the plaintiff may have to the
56 lands in question was acquired by him from the Spanish Government. If the Government never acquired any title whatever it is very clear that it could not have made any conveyance thereof to the plaintiff. Therefore it is necessary to ascertain whether the Government's title has been established.

Although the exact date is not shown, from the evidence introduced it may be deduced with all clearness that one Alonso María Hernández hypothecated a country property as security to guarantee the faithful performance of his duties as collector of revenue of Caguas. It seems that the collector committed a defalcation and the Government instituted the proper proceedings to recover the amount misappropriated.

Naturally, the proceedings should have been directed against the property pledged as security. The oldest data in the record concerning the action taken by the Government in connection with this property appears in a certificate issued by the mayor of Río Piedras in which the statement is made that in "a proceeding instituted for the establishment of boundary lines, survey and appraisement of the property belonging to the collector of Caguas, Alonso María Hernández, there is a record to the effect that on May 25, 1875, the Government seized said lands and placed them in the custody of Eusebio Chiclana." The lands are not described, nothing is said even as to where they are located.

After this, according to a certificate issued by the Commissioner of the Interior, it seems that about the year 1884 "a survey of the property belonging to Alonso Hernández, situated at Sabana Llana, Rio Piedras, was made in 1854 by order of the Treasury Depart-
ment." In the statement of the case prepared by the appel-
57 lant, which was certified to by the trial judge and not objected to by the appellee, no further reference is made to this survey.

Then, according to a communication signed by Surveyor Hernáiz, to which we shall refer in the following paragraph, the mayor of

Rio Piedras, assisted by Surveyor Viera, made a report of a survey made in 1885 of the property of Collector Hernández.

In the year 1886 Surveyor Hernaiz addressed a communication to the Chief of the Bureau of Internal Revenue "informing him that, in pursuance of the said chief's communication of February 23 ultimo, he went to Rio Piedras and obtained from the mayor's office the records and data concerning the property of Collector Hernández, among which was a copy of the deed executed by the brothers Otero to Hernández in Cayey and the report of the survey made last year by the mayor and Surveyor Viera (who owns lands adjoining those occupied by Maria Chaves) in the presence of witnesses Santana and Llompart; that the deed does not give any courses or distances but simply refers to the boundaries by cardinal points, wherefore it is impossible to ascertain whether the land mentioned in the deed existed in 1856 when the sale to Hernández was made; that in the report of the survey there are found the courses and points serving as boundaries for the survey and with which all the adjoining owners are satisfied except Maria Chaves who is occupying and using the land seized by the Government and purchased by her from the Successors of Caneti, she exhibiting receipts as proof that she had made certain payments thereon; that he proceeded
58 to make a survey of the land mentioned in the report of the former survey and made a detailed plan thereof, which plan shows an area of 34.23 cuerdas, or one-fourth of the quantity appearing to have been sold to Collector Hernández. In order to get at the truth of the matter a general examination of the titles of the adjoining owners should be made."

In 1892 a new survey of the land was made by Garcia Saenz, a clerk of the department. The report made by this official says "that he looked over the proceedings for defalcation brought in 1854, from which he learned that the lack of data concerning the boundaries and location of the land was the reason why the different surveys attempted, so that the Government might recover the land forfeited by the defalcation, were fruitless; that the seizure of the property by the mayor of Rio Piedras on behalf of the Government, which is more a matter of record than of fact, included only from 40 to 50 cuerdas, and it was stated that Hernández had never been known as an owner of property in that barrio; that the lands seized were once the property of Juan Otero, who resided there about the year 1820, at which time on moving to Caguas he left Juan Caneti in charge, who remained in charge up to his death, after which his son sold the property to Clemente, the husband of Paula Chaves, who was in possession at the time of the seizure; that neither from the record of the seizure proceedings nor from the deed of the Oteros executed May 5, 1854, nor from the plan made of the property in March, 1886, which is the only plan known * * * (hiatus) steps be taken, although restricted to the 34 cuerdas which is the acreage occupied by Paula Chaves as her own, can any definite information be obtained by which to identify the lands which
59 really belong to Hernández, for the public deed of the Oteros only gives as boundaries the lands belonging to the

Marchioness de León and José de la Cruz without fixing the location or the points and corners of its limits, referring simply to an approximate area of from 140 to 150 cuerdas; that he proceeded to make a survey of the entire zone where the lands are supposed to be located, so that with the plans and titles of the owners he might identify the lands belonging to Hernández; that with this end in view the owners were summoned and the investigation was made with the following result: The occupants of parcels Nos. 3, 5, 6, 9, 10, 11 and 12, who are Maria Nieves, Paula Chaves, José Martinez, Francisco Guerra, Teodoro Guerra, Gregorio Chaves and Dionisio Cruz, failed to present any authentic instrument. Therefore the said seven parcels may be considered as forming part of the 112 cuerdas and 1,921 square yards, and the seizure of these properties may be ordered and the sale thereof proceeded with."

In the same year 1892 the Secretary of Finance decided that in order to be able to pass upon the legality of the titles presented to the civil engineer at the time he was surveying the property of Collector Hernández it was necessary that said owners should deliver to him whatever possessory titles they might have in order that an examination thereof might be made. This is the inference drawn from a communication addressed to the mayor of Rio Piedras on August 11, 1892, by virtue of which the mayor served the owners with notice to appear, which was complied with by Gregorio Chaves who made the statement that the document he had showing that he had acquired title to his land was burned the year before.

It does not appear that any steps were taken immediately by the Government, but it does appear that three years after, in 1895, the Chief of the Bureau of Internal Revenue of Porto Rico, by order of the Secretary of the Treasury, addressed a communication to the mayor of Rio Piedras directing him to take possession in the name of the Government of the estate measuring 112 cuerdas which was described, and that on June 5, 1895, the mayor seized and took possession of the property in the name of the Government, according to the record made by him at the time. No record exists of the details of the act of taking possession.

The certificate issued by the registrar of property relative to the first record of the property of 112 cuerdas sold afterwards to Elzaburu shows that said first record was made in favor of the Spanish Government "which stated that it was the owner thereof as the result of the seizure or adjudication in the proceedings prosecuted against Alonso Hernández as collector of Caguas to recover the sum of $7,776.62 claimed from him, said adjudication having been carried into effect on July 5, 1895." The record was one of possessory title and was entered on September 4, 1895.

From the preceding statements we are informed of the numerous difficulties encountered by the Spanish Government in its endeavor to identify the property alleged to belong to Col-ector Hernández, and that from its first attempt to take possession thereof the Chaves family was found in possession of the lands, claiming that they had acquired the title thereof by purchase and that they had never

been ejected from the premises by a final and lawful order
61 of any competent authority.

The fact is that although Collector Hernández pledged certain country property as security, it is very doubtful that Hernández was as a matter of fact the owner of the property to which he seems to have made reference. This is the origin of all the difficulties.

In proof of Hernández's title to the property which he hypothecated to guarantee the faithful performance of his duties, there was introduced "a copy of a public deed executed at Cayey on May 5, 1854, before the mayor of that town, Sebastián Colón, by José Saturnino, Isidora, María Fruta and Daría del Otero, stating that in their own right and promising the acquiescence of their brothers, Bonifacio and Demetrio del Otero, they sell to Alonso Maria Hernández a property situated in barrio Honduras of Río Piedras, adjoining the lands of the Marchioness de León and José de la Cruz and containing between 140 and 150 cuerdas, the exact number of which shall be set forth in the public deed to be executed for the purpose, together with its points and boundary lines when surveyed, for the sum of 2,200 pesos cash, which amount they acknowledged to have received. Said deed was signed by the brothers and sisters, José Saturnino, Maria, Isidora, Daria and Justa del Otero, and by Sebastian Colón as successor of Lucas Vásquez; but the signatures of the witnesses, whose names as given in the deed are Sebastián Porrata, Ramón Pacheco and Felipe Aguero, do not appear.

And as a record of still an older date, the plaintiff introduced
a copy of certain proceedings signed by the general keeper
62 of protocols of the notarial district of San Juan from which it appears that about the year 1836 José Concepción de Castro, as testamentary executor of his mother, Eugenia de la Cruz, addressed a communication to the mayor of San Juan stating that his ancestor and her brother, José, inherited from their grandparents a piece of land situated in Honduras, Rio Piedras, which she sold in 1819 to Juana Maria del Otero, who without a deed thereto had been occupying it ever since as property of her own; and that on account of the death of his mother he instituted proceedings to prove that she had inherited that property and had sold it afterwards to said Juana Maria del Otero.

In the proceedings the adjoining owners and the Síndico Procurador General were cited and the following witnesses testified:

1. José de la Cruz, brother of Eugenia, stated that he and his sister inherited a property, one-half of which his sister possessed for over 20 years until she sold it to Juana María del Otero in 1819, and "that being an adjoining owner he has seen Juan Caneti for many years occupying said property, although he was unable to say under what title he was occupying same."

2. Juan Jose Giménez said that "he knew the farm as the property of the parents of Eugenia and José de la Cruz; that they inherited it and that José transferred his share to Eugenia who after-

wards sold it to Mrs. Otero; that he is unable to say anything with regard to the possession of the property by Mrs. Otero be-
63 cause he has seen Juan Caneti for some years occupying same, not knowing, however, under what title or right he did so."

3. Juan Gregorio Feliz testified the same as the preceding witness.

4. Domingo de Castro stated that "the fact of the sale to Mrs. Otero was true, but that he did not know whether or not she possessed same uninterruptedly for the reason that he had not been in Honduras for a good many years;" and

5. Facundo de Castro stated that "from the time he was 12 years of age until he was 25 he knew the property at Honduras as belonging to José de la Cruz, father of Eugenia and José, who had inherited it; José having sold his share to Eugenia who, as he had heard, sold it to Mrs. Otero, from which time he knows nothing about the matter; that he had heard that Juan Caneti was in possession thereof, but that he does not know under what title."

When the taking of testimony was concluded the Sindico stated that in his judgment the proceedings should be approved because the ownership of the property had been duly shown and the fact that the witnesses had stated that the property was in the possession of Caneti did not affect the legality of the right sought to be proven since "Doña Juana might have leased it or sold it to Caneti."

It does not appear that Caneti was either summoned or heard. The proceedings were finally approved by the Court of San Juan, May 20, 1836.

After a comparison of the boundary lines and a study of all the evidence introduced it is evident that the property formerly possessed by Paula Chaves and now by her heirs, the defendants
64 herein, is comprised within the boundaries which the Spanish Government fixed for the properties sold to the plaintiff Elzaburu. In regard to the question of identification there can be no ground for doubt. But there is a doubt as regards the question of ownership of such a degree that, in our judgment, it is impossible to reach the conclusion that the plaintiff has proved that he is the sole and lawful owner of the parcel of land claimed and has the right to recover the title and possession thereof from the defendants.

A careful examination of the proceedings instituted in 1836 discloses the facts that no description of the property is given; that even the witnesses for the petitioner failed to establish the possession of Mrs. Otero, limiting themselves to the fact of the sale and referring, besides, to the fact of the possession by Juan Caneti and that the Sindico himself, in proposing that the proceedings be approved, said that "although the witnesses had stated that the property was in the possession of Juan Caneti, this did not affect the

legality of Doña Eugenia's right and that Doña Juana might have leased it or sold it to Caneti." It may be seen, therefore, that there is some obscurity with regard to Juan Caneti. Had he been a mere lessee or manager of the property, acting in harmoney with the real owner, the witnesses and the Síndico would not have referred to him in the manner they did. It seems that even since that remote date there existed conflicting interests as to the ownership of the property being litigated in this suit.

If we pass from 1836 to 1854 we will find the deed of sale said to have been executed by the Otero brothers to Hernández.
65 This deed, which is the basis upon which the rights of Hernández rest, and consequently those of the Spanish Government and the plaintiff Elzaburu, is so defective that we cannot consider it as a real public instrument since the signatures of the persons who are said to have witnessed the deed are lacking. Furthermore, the exact connection between Juana Maria Otero, who was shown to be the owner of the property in 1836, and the Otero brothers who sold it in 1854, has not been established nor does it appear that the brothers Demetrio and Bonifacio del Otero ever ratified the deed, nor that in compliance with the provisions of this deed another was made as agreed upon fixing the points and boundary lines and the exact number of cuerdas of the property sold.

Having only such a frail basis as that afforded by the deed of 1854 explains why the Spanish Government, notwithstanding its power and great facilities, delayed 20 years in pursuing the property to which the said deed seems to refer and in finally deciding to record its possessory title in the registry of property.

The difficulties arose when the embezzlement was discovered and an effort was made to recover the debt out of the property which was pledged as security by the collector to guarantee the faithful performance of his duties. The property was not found. It is not known how the seizure in 1875 was carried into effect, nor the exact number of cuerdas seized, nor the exact location of the property. In 1885, 10 years after the seizure, only 34 cuerdas could be found of the 140 to 150 which the property sold by the Otero family
66 to Hernándes was supposed to contain, according to the survey made by surveyor Viera.

There appears in an official document issued in 1886 by Surveyor Hernáiz the statement that all, the adjoining owners were satisfied with the survey made by Viera "except María (?) Chaves, who was occupying and using the land seized by the Government and purchased by her from the successors of Caneti, she exhibiting receipts as proof that she had made certain payments thereon."

In 1892 Civil Engineer Garcia Saenz spoke of the surveys made as fruitless and of the seizure made by the municipality in the name of the Government as "more a matter of record than of fact," stating besides that when said seizure was being made it was shown that "Hernández had never been known as an owner of property in that barrio." Notwithstanding these facts as established by him, said civil engineer concluded his report with the statement that as a number of persons, among them Paula Chaves, had no lawful titles

to the properties of which they were in possession, amounting in all to 112 cuerdas, "the actual seizure thereof may be ordered and its sale proceeded with."

This was carried into effect three years later by the Government which decided for itself that it had a right to the possession of the 112 cuerdas and ordered the mayor of Río Piedras to seize the same. Its right was recorded in the registry of property and conveyed later to the plaintiff Elzaburu.

As we have already said, there is no record of the details connected with the act of taking possession of the 112 cuerdas by the mayor on behalf of the Government, but the fact remains that if those
67 112 cuerdas included the 50 cuerdas possessed by Paula Chaves she continued in possession thereof, and not only did she remain in possession but she obtained a certificate from the said mayor of Río Piedras wherein it was stated that she possessed the property as the owner thereof for the purposes of the possessory title proceedings approved in that same year, 1895, in which the taking of possession by the Government is alleged to have occurred.

With regard to the plaintiff Elzaburu we should further state that according to the testimony given by him at the trial he had knowledge of every detail in connection with this case owing to the fact that as a clerk employed in the Bureau of Internal Revenue he took part in the administrative proceedings thereof up to the time when the property was recorded in the registry of property.

Under such circumstances it cannot possibly be concluded that the plaintiff, who has brought an action of ejectment in this case, has shown that he and he alone is the lawful owner of the 50 cuerdas possessed by the defendants.

This opinion becomes still stronger after making an examination of the evidence offered by the defendants in support of their counterclaim.

Said evidence consisted of the testimony of witnesses, some of them of advanced age, all of which tended to show that the original owner of the parcel of land in dispute was Juan Caneti; that from him it passed to Santos Caneti, his son, who sold it to Ramón Clemente, the husband of Paula Chaves, from whom the ownership descended later to Paula and her children by Clemente, which children now hold the title. Said evidence consisted also of documents
68 showing that Paula Chaves y Cruz proved that "she had been in possession of the property since 1875, when she purchased it from Santos Caneti," and accordingly instituted the necessary proceedings in connection with which the adjoining owners were summoned and testimony was taken from several witnesses, which proceedings were approved November 7, 1895, and recorded in the registry of property March 11, 1896; of the fact that taxes had been paid; of certain court decisions relating to the designation of heirship, and of the judgment rendered in the action of unlawful detainer hereinbefore mentioned, etc.

After a review of all that evidence in relation to that of the plaintiff, the conclusion is reached that the rights of the defendants date from 1875, at least, when their ancestor made the purchase from

Santos Caneti, the son of the Juan Caneti referred to in the proceedings instituted in 1836, and in reference to whom the Síndico said that the property might have been leased or purchased by him from Mrs. Otero. The Canetis were in constant possession, whether as the lawful owners or not is not clear, but it is certain that they were in possession before 1836 and that the defendants have been in possession as owners since 1875, that they secured judicial acknowledgment of their possession in 1895 and recorded the same in the registry in 1896. It may be said that their possession was interrupted since 1875 by virtue of the attachment levied by the Government and subsequently by the repeated acts of the same Government and of the plaintiff, but the fact is that neither the former with all its power nor the latter by resorting to every legal means available ever had been able to succeed in ejecting them from the property, and in this suit the title of the plaintiff having been put to
69 the test, we have reached the conclusion that it is not sufficient.

For the foregoing reasons the judgment appealed from should be reversed and the complaint dismissed, without special taxation of costs.

(Signed) EMILIO DEL TORO,
Associate Justice.

70 In the Supreme Court of Porto Rico.

PEDRO DE ELZABURU, Plaintiff and Respondent,
vs.
GENARA CHAVES et al., Defendants and Appellants.

Appeal from the District Court of San Juan, Section 1.

Dissenting Opinion of Mr. Chief Justice Hernandez.

By a public deed executed in the town of Cayey on May 5, 1854, before the mayor, Sebastián Colón, the brother and sisters, José Saturnino, Isidora, María, Fruta and Daría del Otero, acting for themselves and guaranteeing the cooperation of their brothers, Bonifacio and Demetrio del Otero, sold to Alonso María Hernández for 2,200 pesos, cash, a property situated in the ward of Honduras, of Río Piedras, containing from 140 to 150 cuerdas and adjoining lands of the Marchioness de León and José de la Cruz. It was stated in said deed, which was signed by the contracting parties present, but not by the witnesses to its execution, whose names were given as Sebastián Porrata, Ramón Pacheco and Felipe Aguero, that the exact number of cuerdas, together with the points and boundary lines, would be set out in the deed which would be executed for that purpose after a survey of the property.

Subsequently Alonso María Hernández hypothecated said property in favor of the Spanish Government to guarantee the faithful performance of his duties as collector of taxes and revenues of

Caguas and administrative proceedings were instituted
71 against him to recover for a defalcation. After many difficulties in connection with fixing the boundaries and surveying the property in question, a new survey thereof was made in 1892, by García Saenz, a duly authorized official, who surveyed the entire zone where the lands were supposed to be located and settled upon 112 cuerdas and 1,921 Spanish square yards as the land subject to seizure and sale by the Government in satisfaction of the liability incurred by Hernández.

The land in question, of the area stated, was adjudicated to the Spanish Government on July 5, 1895, and recorded in its name in the registry of property on September 14 of the same year. On October 15, 1897, it was acquired at public auction by Juan Manuel Cudrado, who conveyed his rights to the plaintiff, Pedro de Elzaburu, on October 16 of the same year and executed a deed of sale thereof to Elzaburu on October 17, 1898, which deed was recorded in the registry of property in the name of Elzaburu.

When Elzaburu attempted to take possession of a portion of said land, i. e., a parcel of 50 cuerdas which was in the possession of the defendants and had been recorded in the name of their ancestor, Paula Chaves, on March 21, 1896, or subsequent to the record made in favor of the Spanish Government, he was confronted by the complications which have given rise to this suit in which both parties claim the ownership of the parcel of land.

As held by this court in its opinion, it is manifest that the property possessed by Paula Chaves and now by her heirs, the defendants,
is within the limits set by the Spanish Government to the
72 property sold to the plaintiff, Elzaburu, and, in our opinion the conclusion should be reached also that Elzaburu is the sole and lawful owner of the parcel of land claimed.

Elzaburu derives his title from the Spanish Government, the latter from Alonso María Hernández and he from the Otero brothers and sisters by virtue of a public deed executed on May 5, 1854.

Said deed is a genuine public instrument; for, although the signatures of the witnesses who were present at its execution are lacking, their signatures were not required by the law then in force, but only the presence of the witnesses, and the fact of their presence has not been put in issue. Nor does the circumstance that it does not appear that a subsequent deed was executed wherein the points and boundary lines of the property were fixed, vitiate the deed; for these could be determined, as they have been, in a different manner; i. e., by means of the corresponding survey. Nor does the failure of the brothers Demetrio and Bonifacio del Otero to ratify the deed invalidate it, inasmuch as their brother and sisters, the vendors, guaranteed their cooperation, which signifies that they responded for the acceptance by the said Bonifacio and Demetrio of the deed, and the defendants have not alleged that Bonifacio and Demetrio have at any time offered any objection to the sale.

It is true that in the proceedings brought about the year 1823 and approved by the mayor of San Juan it was proven that Eugenia de la Cruz and her brother, José, inherited from their grandparents a

property in Honduras, Río Piedras, which property was sold in 1819 to Juana María de Otero, and it may be deduced also from
73 said proceedings that Juan Caneti entered into possession and enjoyed the use of the said property, but it is not known under what title or right. José de la Cruz testified in the proceedings that his sister Eugenia possessed one-half of the property for more than 20 years until she sold it to Juana María de Otero, which shows that José de la Cruz remained in possession of the other half, and this is corroborated by the fact that he is named as an adjoining owner of said property.

It is stated also in the deed of May 5, 1854, executed in favor of Alonso María Hernández by the Oteros, that the property referred to joins the properties of the Marchioness de León and José de la Cruz, which may lead us to believe that the property which belonged to Eugenia and José de la Cruz is the same, in whole or in part, as that described in the deed of May 5, 1854.

It was not shown at the trial under what title Juan Caneti entered into possession of the property sold to Juana Maria de Otero, for the witnesses who testified in the aforesaid proceedings were ignorant on this point, and the Síndico in suggesting that the proceedings be approved stated that the ownership of the property had been duly established and that the fact that the witnesses testified that the property was in the possession of Caneti did not affect the legality of the right sought to be established, inasmuch as Doña Juana might have leased or sold it to Caneti.

The proceedings were instituted to prove that Eugenia de la Cruz and her brother José inherited the property from their grandparents, Eugenia having sold her share in 1819 to Juana María de Otero, who, without a title deed, had been in possession since that
74 time, and not to show that Juan Caneti had any title to the property; but as the proceedings developed the fact that Juan Caneti was in possession, although his title was not shown, the Síndico concluded that Caneti's possession did not affect the legality of the right of ownership sought to be established, inasmuch as the possession of the property might have been held by Caneti as owner under title of purchase or as lessee.

Caneti did not obtain from Juana María Otero a lawful title to the possession of the lands which the latter acquired from Eugenia de la Cruz, but was a trespasser, judging from the report made by the duly accredited official, Carcía Saenz, in the year 1892, which stated that the lands seized belonged to Juan Otero who lived in the barrio of Honduras in the year 1820, when he changed his residence to Caguas and left Juan Caneti in charge, who remained in possession up to the time of his death, after which his son sold said lands to Clemente, the husband of Juana Chaves, said Clemente holding possession at the time of the seizure.

The defendants have not presented any title as good as or better than the public deed of May 5, 1854, from which the plaintiff derives his title, for there was no proof that Caneti, from whom the defendants derived their rights, lawfully acquired the property from Juana Otero. A more feasible conclusion is that the Oteros re-

ferred to in said deed of May 5, 1854, inherited from Juana Otero the property sold to Hernández and afterwards seized by the Treasurer of Porto Rico.

In any event, Hernández's title, from which Elzaburu derives his ownership, is valid and should be sustained unless the defendants show that it is false in a criminal or civil action. No
75 proof to that effect was introduced at the trial. We do not know under what title and in what circumstances Juan Caneti acquired the property from Juana María Otero. Nor do we know that Santos Caneti was the sole heir of Juan Caneti. Nor can the defendants show that they acquired a title of ownership by prescription. Finally, the record of the possessory title to the property in litigation in the name of The People of Porto Rico was entered in the registry prior to the entry of a like possessory title in the name of the defendants and this is a sufficient reason for the nullity of the later record.

For the foregoing reasons the judgment appealed from decreeing that the title of ownership to the property in litigation is in the plaintiff who has the right to recover it, and that the possessory title recorded in the registry of property in the name of the defendants is null and void, should be affirmed.

(Signed) JOSÉ C. HERNANDEZ,
Chief Justice.

76 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellee,
vs.
GENARA CHAVES et al., Defendants and Appellants.

Appeal from the District Court of San Juan, Section 1.

Judgment.

SAN JUAN, P. R., March 4, 1913.

This court has carefully studied the transcript of the record in this case, and the briefs and arguments of counsel for both parties, and for the reasons stated in the foregoing opinion, holds: that it should reverse, as it does hereby reverse, the judgment appealed from rendered by the District Court of San Juan, Section 1, on May 24, 1911; and should dismiss, as it does hereby dismiss, the complaint filed in this case. Each party shall pay its own costs. Let a certified copy of this judgment and of the opinion on which it is based be forwarded to said District Court for proper purposes.

Thus we pronounce, command and sign.

(Signed) J. H. MACLEARY.
ADOLF G. WOLF.
EMILIO DEL TORO.

Mr. Chief Justice Hernandez, dissented.

Licentiate J. Hernández Usera, Secretary Reporter of the Supreme Court of Porto Rico.

Certify: That the foregoing opinion and judgment are faithful copies of their respective originals; and in order to attach
77 the same to the record to which it belongs I issue the same in San Juan, Porto Rico, this 4th day of March, 1913.

(Signed) J. HERNÁNDEZ USERA,
Secretary Reporter of the Supreme Court.

78 ISLAND OF PORTO RICO:

In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellee,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Appellants.

Appeal from the District Court of San Juan.

On Appeal to the Supreme Court of the United States.

In re Nullity of Title and Ejectment.

Appeal.

Comes now Pedro de Elzaburu, the appellee in this case, and through his counsel, Jacinto Texidor, respectfully states:

That he appeals to the Supreme Court of the United States from the whole of the judgment rendered by this Supreme Court of Porto Rico in the case above cited, on March 4, 1913. That the judgment appealed from affects the title of the entire property of the appellant herein, and that said property has a value of more than five thousand dollars, according to a fair and just estimation made by the appellant.

Moreover, that the judgment appealed from affects and decides as to the property which the Spanish Government had in Porto Rico, since it treats of an estate sold by the Spanish Government to the appellant, and that such question touches directly on the agreement between the United States of America and Spain, contained in the Treaty of Peace of April 11, 1899.

Wherefore, the appellant herein, Pedro de Elzaburu, prays the court to grant this appeal to the Supreme Court of the United
79 States, fixing the bond to be furnished by appellant, making the proper citations to appear, and all other proceedings in the case.

San Juan, P. R., June 13, 1913.

(Signed) J. TEXIDOR,
Counsel for Appellant Elzaburu.

80 ISLAND OF PORTO RICO:

In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellee,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Appellants.

Appeal from the District Court of San Juan.

On Appeal to the Supreme Court of the United States.

In re Nullity of Title and Ejectment.

Affidavit.

I, Pedro de Elzaburu Vizcarrondo, of age, married, property owner and a public employee, and a resident of San Juan, Porto Rico, declare and swear:

That I am the appellant in the case above cited.

That I have read the foregoing writing, and the facts therein established are true, and known to me of my own personal knowledge.

That the estate whose ownership is dealt with in the case above cited and which was acquired by me from the Spanish Government, is of a value greater than five thousand dollars, according to a just and loyal estimate.

San Juan, P. R., June 5, 1913.

(Signed) PEDRO DE ELZABURU.

Aff. No. 42.

Sworn to and subscribed before me by Pedro de Elzaburu y Vizcarrondo, of age, married, a resident of San Juan, Porto Rico, an employee and property owner, who is personally known to me, on this 5th day of June, 1913, in San Juan, P. R.

(Signed) J. HERNANDEZ USERA,
Secretary-Reporter Supreme Court.

81 In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellee,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN C. CHAVES, Defendants and Appellants.

Appeal from the District Court of San Juan.

On Appeal to the Supreme Court of the United States.

In re Nullity of Title and Ejectment.

Assignment of Errors.

The present appellant, Pedro de Elzaburu, through his counsel, Jacinto Texidor, respectfully files with the court his assignment of errors, and says:

That in his opinion, in the judgment rendered by this Honorable Court on March 4, 1913, in the case above cited, the Court committed the following errors:

First.

The Supreme Court of Porto Rico, in the aforesaid judgment, of March 4, 1913, committed an error in considering the legal effects of the final judgment rendered by the District Court of San Juan, P. R., in case No. 341, Pedro de Elzaburu vs. Laureano Rosario, Genara, Gregoria, Rafaela and Juan Clemente Chaves, in re, opposition to conversion of possession into dominion.

In the said judgment, which has the character of definitive and final, especially for those who were parties at the suit as Elzaburu and the Chaves, the court, on examining all the evidence introduced in the case, declared that the fifty cuerdas of land—the same which
82 are the object of the present suit—are the property and ownership of Pedro de Elzaburu, and have never been in the lawful and legitimate possession of Genara, Gregoria, Rafaela and Juan Clemente Chaves. The titles of ownership and possession of the estates had been submitted to the Court and argued therein, and considered by the same in its judgment, which judgment was never appealed from.

In our opinion, the court has committed an error in not giving to said judgment of May 31, 1907, the authority of res judicata between the present litigants, since the judgment referred to the same estate, and the same titles were the object of discussion, and the parties to that suit were the same, occupying identical positions to those which they hold in the present case.

Second.

The judgment appealed from recognizes that the estate of fifty cuerdas claimed by Genara, Gregoria, Rafaela and Juan Clemente Chaves to be theirs, is an integral part of the estate of 112 cuerdas that the Spanish Government sold at public auction and which was acquired by Juan M. Cuadrado and later by the appellant, Pedro de Elzaburu, by virtue of a cession made to him. But in said judgment an error is committed in not giving any weight to the recorded possession made in favor of the Spanish Government, it being considered, on the other hand, the possession recorded by the defendants Chaves or their mother, Paula Chaves.

According to the judgment appealed from the Spanish Government recorded the possession in its favor of the estate of 112 cuerdas, on September 14, 1895, and the defendants' ancestor recorded the possession of the 50 cuerdas in 1896.

83 An error is committed in said judgment because the material act of occupation is given preference to the legal act that the property remained subject in its entirety to the will of its possessor, the Spanish Government, by means of the steps to enter into possession and of the proceedings which after conclusion were recorded in the Registry of Property; and because preference is denied to the oldest lawful possession, which is that of the Spanish Government. (Sections 440 and 447 of the Civil Code.)

Third.

The Supreme Court of Porto Rico committed an error in the judgment appealed from in giving legal consideration to a supposed title of purchase of the ancestors of the defendants and appellants. Such title is no more than a verbal statement of the interested parties and some of the witnesses, with reference to the fact that the Chaves' ancestors acquired by purchase from Santos Caneti, whether or not he was the owner of the property, nor had any title of ownership. And no weight is given to the proceedings instituted by the Spanish Government for the survey and demarcation of the estate and the seizure thereof.

Fourth.

The Supreme Court of Porto Rico committed an error in the judgment appealed from in not giving any legal effect to the deed of sale executed in 1854 by the Otero children, on the ground that the same is defective and the signatures of the witnesses do not appear, giving, on the other hand, value and legal effect as a title in favor of the Chaves, to the statements made by their witnesses. The deed,

84 according to the modern notarial legislation is defective; but it must be borne in mind that almost all those executed at that time are also defective. The fact that the signatures of the witnesses are lacking is not an evidence that they were not present at the execution of the deed; and the appearance of the witnesses was the essential condition for the validity of the deed. At any rate, the deed

would be at least, if not a public instrument, a private one, showing the real existence of the sale.

The appellant thinks that the court committed error in not considering the same as such.

The appellant, respectfully, submits to the Honorable Court these assignment- of errors.

San Juan, P. R., June 3, 1913.

(Signed) JACINTO TEXIDOR,
Counsel for Appellant, Pedro de Elzaburu.

85 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellee,
vs.
GENARA CHAVES et al., Defendants and Appellants.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Decision.

SAN JUAN, PORTO RICO, June 5th, 1913.

The appeal taken by Attorney Jacinto Texidor in the name of the plaintiff to the Supreme Court of the United States from the judgment rendered by this court in the present case on March 4, 1913, is admitted; the bond which said party appellant must give to answer for the costs that such appeal may occasion the adverse party is fixed at $500; within a period of thirty days said party appellant must file a bill of the statement of the case in the nature of a special verdict, notice of same with copy to be served on the adverse party; and he is granted a period of 60 days for the preparation and translation of the record that must be forwarded to the Supreme Court of the United States.

Decided and signed by the Judges of the Supreme Court.

(Signed) JOSÉ C. HERNÁNDEZ.
ADOLPH G. WOLF.
EMILIO DEL TORO.

86 In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
vs.
GENARA CHAVES et al., Defendants and Appellees.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Bond on Appeal to the Supreme Court of the United States.

Know all who these presents see, that we, Luis Sanchez Morales and José de Elzaburu, as sureties, are hereby firmly bound to Genara, Gregoria, Rafaela and Juan Clemente Chaves in the total and exact sum of $500., payable to said Genera, Gregoria, Rafaela and Juan Clemente Chaves, their attorneys, administrators or assigns; to the punctual and exact payment of which we hereby bind ourselves and our heirs, executors and administrators, jointly and severally, on this 16th day of June, 1913.

Whereas, recently, at one of the sessions of the Supreme Court of Porto Rico, in a suit pending therein, Pedro de Elzaburu being the plaintiff, and Gregoria, Genara, Rafaela and Juan Clemente Chaves being the defendants, judgment was rendered against said plaintiff, and said plaintiff has obtained from said court an appeal to the Supreme Court of the United States in order to obtain the reversal of the judgment rendered in said suit, and a citation addressed to Genara, Gregoria, Rafaela and Juan Clemente Chaves will or has been issued summoning them to appear in the Supreme Court
87 of the United States at Washington, D. C.

Therefore, the condition of the above obligation is such that if said Pedro de Elzaburu prosecutes said appeal and answers for all the costs which might be taxed against him in case the appeal fails, then the foregoing obligation shall have no effect; but if the contrary should occur, it shall subsist in full force and effect.

(Signed) L. SANCHEZ MORALES.
JOSÉ DE ELZABURU.

Affidavit No. 681.

The present document has been subscribed before me by Luis Sanchez Morales, of age, property owner, and a resident of San Juan, who I know personally, on this 16th day of June, 1913.

(Signed) GABRIEL GUERRA,
Notary Public.

Affidavit No. 682.

The present document has been subscribed before me by José Elzaburu, of age, property owner, and a resident of San Juan, who I know personally, on this 16th day of June, 1913.

(Signed) GABRIEL GUERRA,
Notary Public.

88 In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Now Appellees.

Appeal from a Judgment Rendered by the Supreme Court of Porto Rico.

UNITED STATES OF AMERICA,
Island of Porto Rico:

I, José Elzaburu, do solemnly swear: That I am a resident of San Juan, Porto Rico; that I am the owner of real property in said municipality to an amount of over $500, over and above all my debts and liabilities exclusive of all property exempt from execution; that I pay taxes on said real property to the amount of $50; that in assuming the obligation to which the bond which I have given in this case as surety for Pedro Elzaburu refers, which bond was given in the Supreme Court of Porto Rico on the 16th of the current month, I did so freely, without reserve, and without the purpose of evasion; and that I make this affidavit so that it may form part of said bond for the appeal which the plaintiff now appellant in this case has taken to the Supreme Court of the United States.

(Signed) JOSÉ ELZABURU.

Affidavit No. 684.

Sworn to and subscribed before me by José Elzaburu, of age, property owner, and a resident of this city, whom I know personally, on this 17th day of June, 1913, in San Juan, P. R.

(Signed) GABRIEL GUERRA,
Notary Public.

89 In the Supreme Court of Porto Rico.

Civil. No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Now Appellees.

Appeal from a Judgment Rendered by the Supreme Court of Porto Rico.

UNITED STATES OF AMERICA,
Island of Porto Rico:

I, Luis Sanchez Morales, do solemnly swear: That I am a resident of San Juan, Porto Rico; that I am the owner of real property

in said municipality to an amount of over $500, over and above all my debts and liabilities exclusive of all property exempt from execution; that I pay taxes on said real property to the amount of $50; that in assuming the obligation to which the bond which I have given in this case as surety for Pedro Elzaburu refers, which bond was given in the Supreme Court of Porto Rico on the 16th of the current month, I did so freely, without reserve, and without the purpose of evasion; and that I make this affidavit so that it may form part of said bond for the appeal which the plaintiff now appellant in this case has taken to the Supreme Court of the United States.

(Signed) LUIS SANCHEZ MORALES.

Affidavit No. 683.

Sworn to and subscribed before me by Luis Sanchez Morales, of age, property owner and a resident of this city, whom I know personally, on this 17th day of June, 1913, in San Juan, P. R.

(Signed) GABRIEL GUERRA,
Notary Public.

90 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
vs.
GENARA, GREGORIA, RAFAELA, and JUAN CLEMENTE CHAVES, Defendants and Respondents.

Appeal from the District Court of San Juan, Section First.

On Appeal to the Supreme Court of the United States.

Order.

SAN JUAN, PORTO RICO, June 19, 1913.

The bond executed by Messrs. Luis Sanchez Morales and José de Elzaburu on the 16th of June instant, as sureties, in the above entitled cause by reason of the appeal taken to the Supreme Court of the United States, is hereby approved.

It was so ordered by the Court, and the Chief Justice signs. I certify.

(Signed) JOSÉ C. HERNÁNDEZ,
Chief Justice.
J. HERNÁNDEZ USERA,
Secretary.

fgb.

91 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Respondent,
v.
GENARA CHAVES et al., Defendants and Appellants.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Decided by Opinion and Judgment of March 4, 1913.

Statement of Facts in the Nature of a Special Verdict.

Be it remembered that this is an action in ejectment to recover title to real property brought in the District Court of San Juan, Section 1, and there decided in favor of the plaintiff, Pedro de Elzaburu; that an appeal was taken from the judgment to this court by the defendants, Genara Chaves et al.; that the judgment appealed from was reversed by this court and the complaint was dismissed for the reasons stated in its opinion of March 4, 1913; that the plaintiff, Pedro de Elzaburu, not being satisfied with our judgment, appealed therefrom to the Supreme Court of the United States, for the purposes of which appeal the following statement of facts is prepared in the nature of a special verdict.

92 **First.**

The evidence introduced, as it appears from the statement of the case filed in this court, shows:

A.

That Alonso María Hernández hypothecated a farm property to guarantee the faithful discharge of his duties as collector of taxes of Caguas. The date of the surety is not shown nor is a description of the property encumbered thereby given. The deed of hypothecation was not introduced in evidence.

B.

That it appears that said collector, Alonso María Hernández, committed a defalcation, and that the government instituted proceedings to indemnify itself for the amount embezzled, directing said proceedings against a farm on which the surety was considered as created, the oldest datum shown in the record relative to the action of the government in connection with the property being a certificate issued by the mayor of Río Piedras, wherein it is stated that in "a proceeding instituted for the establishment of boundary lines, survey and appraisement of the estate belonging to the collector of

Caguas, Alonso María Hernández, there is a record to the effect that on May 25, 1875, the government seized said land and placed it in the custody of Eusebio Chiclana." The land is not described and its location is not given.

C.

That afterwards, about the year 1884, as stated in a certificate issued by the Commissioner of the Interior of Porto Rico, "a survey of the property belonging to Alonso Hernández, situated in
93 Sábana Llana Río Piedras, was made in 1854, by order of the Treasury Department." Nothing more is said in the record relative to said survey.

D.

That later, according to a communication from Surveyor Hernaiz, a report of a survey "of the estate of Collector Hernández" was made by the mayor of Río Piedras assisted by Surveyor Viera.

E.

That in the year 1886 Surveyor Hernaiz addressed a communication to the Chief of the Bureau of Internal Revenue "informing him that in compliance with the said chief's communication, of February 23 ultimo, he proceeded to Río Piedras, where in the mayor's office he was given all the records and data relative to the property of Collector Hernández, among which was a copy of the deed executed by the brothers Otero to Hernández, in Cayey, and the report of the survey made last year by the mayor and Surveyor Viera, who owns lands adjoining that occupied by María Chaves, in the presence of witnesses, Santana and Llompart; that the deed gives no courses or distances but only refers to the boundaries by cardinal points, for which reason it is impossible to ascertain whether at the time of making the sale to Hernández in the year 1856 the land mentioned in the deed existed; that in the report of the survey are found the courses and points which should serve as boundaries for said survey, with which all the owners of the adjacent properties are satisfied, except María Chaves who occupies and uses the land seized by
94 the Treasury, she having bought it from the Succession of Caneti and having shown a receipt for certain payments made thereon; that he proceeded to make a survey of the land comprised in the report of the survey and made a detailed plan thereof, it including 34.23 cuerdas, or one-fourth of the land which appears to have been sold to Collector Hernández. To ascertain the truth of the matter a general examination of the titles of the adjacent owners should be made."

F.

That in the year 1892 Surveyor García Saenz made a new survey, a report of which says: "That he made a study of the proceedings relative to the defalcation instituted in 1854, from which he was informed that the lack of data in reference to the boundaries and location of the land was the reason why the different surveys at-

tempted, so that the government might recover the land forfeited by the defalcation, were fruitless; that the seizure of the property by the mayor of Río Piedras in the name of the government, which was more a matter of record than of fact, was of only 40 or 50 cuerdas, it being stated that Hernández had never been known as a landowner in that ward; that the lands seized belonged at one time to Juan Otero who resided there about the year 1820, at which time, on moving to Caguas, he left Juan Caneti in charge of the property, the latter possessing the same up to the time of his death, his son having sold it later to Clemente, the husband of Paula Chaves, who possessed it at the time of the seizure; that neither from said record of the seizure nor from the Otero deed, dated May 5, 1854,
nor from the plan of the survey of March, 1886, which is the
95 only one known (sic) as to the carrying out of any transactions, though limited, to 34 cuerdas, which is the land occupied by Paula Chaves as her own, can any definite information be obtained from which to identify the lands which really belong to Hernández, since the deed of Otero only gives as boundaries the lands of the Marchioness de León and José de la Cruz, without determining the location or the points and corners of its limits and only refers to an approximate area of 140 to 150 cuerdas; that he made the survey of the entire zone where the lands are supposed to be located so that with the plans and titles of the owners he might identify the lands once possessed by Hernández; that for the above purpose the owners were summoned and the investigation was made, with the following result: The occupants of parcels 3, 5, 6, 9, 10, 11 and 12, who are María Nieves, Paula Chaves, José Martínez, Francisco Guerra, Teodoro Guerra, Gregorio Chaves, and Dionisia Cruz, failed to present any authentic titles, therefore the said seven parcels may be considered as forming part of the 112 cuerdas and 1,921 square yards, and the seizure of these properties may be ordered and the sale thereof proceeded with."

That in the same year 1892 the Secretary of Finance decided that in order to ascertain the legality of the titles presented to the forest engineer when surveying the property of Collector Hernández said owners should deliver to him for examination such titles of possession as they might have. This is inferred from a communication addressed to the mayor of Río Piedras on August 11, 1892, by virtue of which the mayor cited the owners and Gregorio Chaves appeared
and stated that the receipt he had showing the acquisition
96 of his land was burned the year before.

H.

That three years later, or in 1895, the Chief of the Bureau of Internal Revenue of Porto Rico, under instructions from the Secretary of the Treasury, addressed a communication to the mayor of Río Piedras directing him to take possession in the name of the government of the estate of 112 cuerdas described, and that the mayor, on June 5, 1895, according to the record made by him, proceeded to said property and seized the same in the name of the government. Neither this record nor a copy thereof was introduced in evidence,

and no records exist of the details of the act of taking possession. Paula Chaves, the ancestor of the defendants, who at that time was in possession of the parcel of land which is now claimed, not only continued in possession of the same but, for the purposes of possessory title proceedings brought by her in the year 1895, obtained a certificate from the mayor of Río Piedras to the effect that she possessed the land as owner thereof.

I.

That in proof of the title of Collector Hernández to the estate which he hypothecated to guarantee the faithful performance of his duties there was introduced "a copy of a deed executed in Cayey on May 5, 1854, before the mayor of said town, Sebastián Colón, in which the brother and sisters, José Saturnino, Isidora, María, Fruta and Daría del Otero, in their own right and promising the acquiescence of their brothers, Bonifacio and Demetrio del Otero,
97 sold to Alonso María Hernández an estate in the barrio of Honduras, Río Piedras, adjoining lands belonging to the Marchioness de León and José de la Cruz, composed of from 140 to 150 cuerdas, the exact number of which would be stated in the deed to be executed for the purpose, as well as its points and boundaries when it should be surveyed, for 2,200 pesos cash, which sum they acknowledged to have received. Said deed is signed by the brother and sisters, José Saturnino, Isidora, María and Justa del Otero, and by Sebastián Colón as successor of Lucas Vázquez; the signature of the witnesses, whose names according to the deed are Sebastián Porrata, Ramón Pacheco and Felipe Aguero, do not appear.

J.

That the plaintiff also introduced in evidence a copy of certain proceedings issued by the general keeper of protocols of the notarial district of San Juan, from which it appears that about the year 1836 José Concepción de Castro, as testamentary executor of his mother, Eugenia de la Cruz, addressed a communication to the mayor of San Juan stating that his ancestor and her brother, José, inherited from their grandparents a property in Honduras, Río Piedras, which she sold in 1819 to Juana María del Otero, who, although without a deed thereto, had occupied the same ever since as her own, and that his mother having died he desired to show that she had inherited said estate and later sold the same to Mrs. Otero. The proceedings were brought, the adjacent property owners and the Síndico Procurador General were cited and the following witnesses testified: 1. José de la Cruz, brother of Eugenia, stated that they both inherited an
98 estate; that Eugenia held one-half of the same for over 20 years, or until she sold it to Juana María del Otero in 1819, and that "he, as owner of the adjoining property, had seen Juan Caneti for many years in possession of the property aforesaid, although he did not know under what title he possessed the same." 2. Juan José Giménez said that "he knew the estate as the property of the parents of Eugenia and José de la Cruz; that they inherited the same and that José conveyed his share to his sister, Eugenia,

who sold it afterwards to Mrs. Otero; that he can make no statement as to Mrs. Otero's possession of the estate because he had seen Juan Caneti occupying the same for some years, although he does not know under what title or right he possessed it." 3. Juan Gregorio Félix testified the same as the preceding witness. 4. Domingo de Castro stated that "the sale to Mrs. Otero was a fact, but that he did not know whether or not she had possessed said property uninterruptedly as he had not been in Honduras for many years." 5. Facundo de Castro testified that "from the time he was 12 years old up to his twenty-fifth year he knew the estate in Honduras to be the property of José de la Cruz, the father of Eugenia and José, who inherited the same, José having sold his share to Eugenia who, as he had heard, sold it to Mrs. Otero, since which time he knows nothing about the matter; that he had heard also that Juan Caneti possessed the property but he does not know under what title."

After the evidence had been heard the Síndico stated that in his opinion the proceedings should be approved since the ownership of the property had been duly shown and the fact that the witnesses had stated that the land was in the possession of Caneti did
99 not affect the legality of the right sought to be established since "Dona Juana might have leased it or sold it to Caneti." It does not appear that Caneti was either summoned or heard. The procedings were finally approved by the Court of San Juan on May 20, 1836.

K.

That in the year 1895 the Spanish Government, through one of its officials, issued a certificate stating that "by virtue of the seizure or adjudication made in the proceedings prosecuted against Alonso Hernández as collector of Caguas to recover the sum of $7,776.62 claimed from him, it was the owner of the property of 112 cuerdas to be described, said adjudication having been made on July 5, 1895." Therefore the government recorded its possessory title in the registry of property, without prejudice to third parties having better rights, on September 14, 1895, to the following property:

"Tract of land situated at a place known as Honduras, in the ward of Sábana Llana, municipality of Río Piedras, consisting of 112 cuerdas, equivalent to 44 hectares, 17 ares, and 16 centares; bounded on the north by lands of Frutos Caloca and Juana Rivera; on the south by lands of Laura García, formerly of Atanasio Vargas, Julia Zayas, Prudencio de la Cruz, and the Succession of Luis Vázquez; on the east by lands of Ignacio Llompart, Valentín Rondón, Succession of Juan Hernaiz, Prudencio de la Cruz and Maria de la O. Andino; and on the west by lands of Atanasio or Anastasio Vargas, later of Laureano Rosario."

That the government, through one of its officials, sold the above-described property at public auction on October 15, 1897, for $600, payable in 10 yearly instalments, to Juan Manuel Cuadrado,
100 who assigned his rights to the plaintiff, Pedro de Elzaburu, on October 16, 1897. On the same day Elzaburu paid into the Treasury the first instalment and later discharged the other in-

stalments. On October 17, 1898, the Secretary of the Treasury of the Insular Government of Porto Rico, on behalf of the government, executed a deed of sale before a notary public, which deed was duly recorded in the registry of property in the name of Elzaburu.

M.

That on attempting to take actual possession of the property Elzaburu found it occupied by different parties, among whom was Paula Chaves the ancestor of the defendants. Elzaburu then addressed a communication to the Secretary of the Treasury under date of April 5, 1899, wherein he stated that he as well as his assignors had been prevented from taking possession of the property on account of the opposition of several parties who claimed that they had possessory titles thereto, and therefore he requested the Department to give him possession of the estate and eject the trespassers. As a consequence of this communication the proper official reported to the Chief of the Bureau of Internal Revenue the facts relative to the case and suggested that the mayor of Río Piedras be commissioned to go upon the property and give possession thereof to the purchaser. The certificate issued for the purpose does not show the action taken by the government or the result obtained therefrom. But it appears from the testimony of Elzaburu at the trial that the mayor was really commissioned for that purpose. The plaintiff testified that during the first part of the year 1900 he went to the property,
101 accompanied by the mayor of Río Piedras and other persons, to take possession thereof, the adjoining property owners being summoned; that "he called at the house of the Chaves family who knew that the auction sale had taken place and that the witness was the successful bidder and who expressed their regret to him at leaving the property and delivered to the witness a copy of their possessory title as recorded in the registry." The evidence shows that neither Paula Chaves then, nor her heirs later, vacated the property claimed by Elzaburu.

N.

That Elzaburu, as shown by his own testimony, knew all the details regarding the matter prior to his purchase of the property of 112 cuerdas, as he had been an employe of the Bureau of Internal Revenue and intervened in the administrative proceedings which gave rise to the record of the estate of 112 cuerdas in the registry of property.

Second.

Moreover, the defendants' oral evidence tends to show that the original owner of the land in dispute was Juan Caneti; that from him it passed to Santos Caneti, his son, who, in the year 1875, sold the same to Román Clemente, the husband of Paula Chaves, from whom the ownership descended later to Paula and her children by Clemente, which children now hold the title. The documentary evidence shows that Paula Chaves proved "her possession of the property since 1875, when she bought the same from Santos Caneti," she hav-

ing instituted judicial proceedings wherein the adjacent property owners were cited and testimony of witnesses was taken, which proceedings were approved on November 7, 1895, and recorded
102 in the registry of property on March 11, 1896; that the defendants have paid taxes on the property and were judicially declared to be the heirs of Paula Chaves, and that they and their ancestors had always been in possession of the property.

Third.

Finally, it appears from the evidence taken at the trial that there were two judicial actions between the same parties now litigating, to wit: *a.* Proceedings having been instituted by the defendants for the purpose of converting their record of possession of the property of 50 cuerdas in dispute into a dominion title Pedro de Elzaburu opposed the same and the court decided the case by a judgment of May 31, 1907, holding that the defendants were not entitled to convert their possessory title into a dominion title. *b.* Pedro de Elzaburu brought an action in unlawful detainer against the defendants and the case was decided by the district court on May 31, 1908, in favor of the defendants. An appeal was taken by Elzaburu and on January 12, 1909, this court affirmed the judgment appealed from.

Fourth.

Four Justices of the Supreme Court of Porto Rico took part in the consideration and decision of this case. Three stood for the reversal of the judgment rendered by the district court and one for its affirmance. As one of the Justices of the majority, Honorable James H. MacLeary, is now absent from this Island, this statement of facts is signed by only the two undersigned Justices.

San Juan, Porto Rico, December 3, 1913.

(Signed) ADOLPH G. WOLF.
(Signed) EMILIO DEL TORO.

McN.

103 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
v.
GENARA CHAVES et al., Defendants and Respondents.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the U. S. to Genara Chaves et al., defendants and respondents, and Manuel F. Rossy, their attorney:

You are hereby cited and admonished to be and appear at the session of the Supreme Court of the United States to be held at the city of Washington, D. C., within sixty days from the date of this writ, pursuant to an appeal filed in the office of the Secretary of the Supreme Court of Porto Rico in a certain cause lately pending in said Court, wherein the said Pedro de Elzaburu is the plaintiff and appellant, and Genara Chaves et al. are the defendants and respondents, to show cause if any there be why the judgment rendered by this Court in said case on the 6th of March, 1913, against the plaintiff and appellant should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. James H. MacLeary, Associate Justice of the Supreme Court of Porto Rico, at the city of San Juan, P. R., this seventh day of July in the year of our Lord nineteen hundred and thirteen.

[Seal Supreme Court of Porto Rico, United States of America.]

J. H. McLEARY,
Associate Justice of the Supreme Court of Porto Rico.

MANUEL F. ROSSY.

Attest:

J. HERNANDEZ USERA,
Secretary-Reporter.

Office of the Marshal of the Supreme Court, P. R.

Received this writ on July 11th, 1913, and served the same by delivering a true copy thereof to Mr. Manuel F. Rossy who is the

person to whom the same is addressed, at San Juan, P. R., on the above date.

San Juan, P. R., July 14th, 1913.

S. C. BOTHWELL, *Marshal,*
By FELIPE JANER, JR., *Deputy.*

104 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
v.
GENARA CHAVES et al., Defendants and Respondents.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:—

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this Court.

In testimony whereof I have signed this certificate in the city of San Juan, Porto Rico, this 6th day of January, 1914.

FELIPE JANER, JR.,
Interpreter and Translator of the Supreme Court of Porto Rico.

fgs.

105 In the Supreme Court of Porto Rico.

No. 799.

PEDRO DE ELZABURU, Plaintiff and Appellant,
v.
GENARA CHAVES et al., Defendants and Respondents.

Appeal from the District Court of San Juan, Section 1.

On Appeal to the Supreme Court of the United States.

Clerk's Certificate.

I, J. Hernandez Usera, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:—

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals

as the same appear on file and of record in this office and embodied in this transcript by the appellant; I further certify that the translation of said papers and proceedings has been revised by the official interpreter and translator of this Court as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof I hereunto set my hand and affix the seal of this Court in the city of San Juan, Porto Rico, this 6 day of January, 1914.

J. HERNANDEZ USERA,
Secretary-Reporter Supreme Court of Porto Rico.

[Four $10 Excise Tax Stamps canceled.]
[Two $1 Excise Tax Stamps canceled.]

fgs.

Endorsed on cover: File No. 24,016. Porto Rico Supreme Court. Term No. 336. Pedro de Elzaburu, appellant, vs. Genara Chaves et al. Filed January 13th, 1914. File No. 24,016.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 336.

PEDRO DE ELZABURU,
APELLANT.

VS.

GENARA, GREGORIA, RAFAELA AND JUAN CLEMENTE CHAVES,
RESPONDENTS.

Appeal from the Supreme Court of Porto Rico.

BRIEF AND ARGUMENT OF PLAINTIFF IN ERROR.

SAN JUAN, P. R.
PORTO RICO PROGRESS PUBISHING CO.
1914.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

1914.

Pedro de Elzaburu, vs. Apellant. Genara Chaves, Gregoria Chaves, Rafaela Chaves and Juan Clemente Chaves, Defendants.	APPEAL FROM THE SUPREME COURT OF PORTO RICO. No. 336. October Term, 1914.

BRIEF AND ARGUMENT OF APELLANT.

STATEMENT OF THE CASE.

This is an appeal taken against a decision rendered by the Supreme Court of Porto Rico on March 4th, 1913.

The apellant originally filed his complaint in the District Court of San Juan, Porto Rico. In said complaint, Pedro de Elzaburu substantially alleged: That he is the sole owner of a parcel of land, consisting of one hundred and twelve cuerdas or acres, in the Ward of Sábana Llana, Municipality of Río Piedras, Porto Rico; the boundaries of which estate appear from the complaint: That he acquired said property from the Spanish Government, by purchase, under public deed, which was recorded at the Registry of San Juan, P. R.: That at the time of said purchase, the

That the defendants are in the lawful possession of the estate of fifty acres. And by way of cross-complaint, the defendants substantially alleged: that the estate of fifty acres before mentioned, was bought by Paula Chaves from Santos Canetti, and that Paula Chaves has a possession title duly recorded.

The plaintiff, denied the allegations of the cross-complaint.

The trial of this case was held on December 9th, 1910, in the District Court of San Juan, Porto Rico, Judge Honorable Félix Córdova Dávila.

As evidence, the plaintiff introduced eleven documents, principally consisting of the public deeds of October 17th, 1898, before Notary Guerra, and by which the Secretary of the Treasury of the Autonomic Government of Porto Rico, sold to Pedro de Elzaburu, the estate of one hundred and twelve acres described in the complaint, and which deed appears duly recorded at the Registry of Property at San Juan, Porto Rico, showing that the possession of the estate above referred to, had been recorded on September 14th, 1895, in favor of the Spanish Government; a copy of an official information dated 1836, about the property of the Otero family; official copy of a deed executed in Cayey on May 5th, 1854, by which the Otero Brothers sell to Alonso Hernández, an estate composed of one hundred and forty to one hundred and fifty cuerdas or acress, and situated in the Ward of Honduras; the certificate issued by the Mayor of Rio Piedras, about the confiscation of lands belongins to Alonso M. Hernández; another certificate of the Commissioner of the Interior of Porto Rico, about the record, survey and demarcation of the one hundred and twelve cuerdas or acres belonging to Alonso M. Hernández, at Honduras, Sábana Llana, Rio Piedras, P. R., and stating that there were some occupants of some parcels, amongst them, Paula Chaves, that witnessed the demarcation, but did not file any

documents to show her rights; certificate of the Registrar of Property at San Juan, concerning the record of the possession of the fifty acres in favor of Paula Chaves, in March, 1896; and a certified copy of the final judgement rendered by the District Court of San Juan, Porto Rico, in Case No. 341, Pedro de Elzaburu vs. Laureano Rosario, Gregoria, Genara, Rafaela and Juan C. Chaves, holding that the estate of fifty acres in Honduras, Sábana Llana, Rio Piedras, is not in the possession of the defendants Chaves, since it is a part of the estate of one hundred and twelve acres belonging to Elzaburu; certificate from the Commissioner of the Interior of Porto Rico, referred to the survey of the estate which belonged to Alonso Hernández, its record, and sale to Elzaburu; and a similar certificate from the Treasurer of Porto Rico; a map of the estate (Pages 13 to 19, Transcript).

Defendants introduced evidence, consisting of: Certificate from the Registrar of Property of San Juan, referred to the record of the possession of the fifty acress in Honduras, in favor of Paula Chaves; some tax receipts; a decision of the Distritc Court of San Juan, annulling an order to cancelPaula Chaves' possessory entries at the Registry of Property; a judgement of the District Court of San Juan, in case Pedro de Elzaburu vs. Genara Chaves et al., and a decision rendered by the Supreme Court of Porto Rico in the same case; certificate from the Secretary of the District Court of San Juan; other from the Commissioner of the Interior of Porto Rico and the Secretary of the Municipality of Rio Piedras. (Pages 19, 20, 21, 22, 23, 24 Transcript).

The District Court of San Juan, on August 3rd, 1911, rendered a decision in favor of plaintiff Pedro de Elzaburu, holding that said plaintiff is the lawful owner and possessor of the fifty acres which are a part of the one hundred and twelve acres by him purchased from the Spanish Government, and the title held by the Chaves in null and void. (Pages 11 and 12, Transcript).

is, in respect to the matter directly adjudged, conclusive between the parties and their successor in interest by title subsequent to the commencement of the tction or special proceeding, litigating for the capacity, provided they have notice, actual or constructive of the pendency of the or proceeding."

(Section 1469 Statutes of Porto Rico and 101 Law of Evidence).

In the present case, the plaintiff, Pedro de Elzaburu, expressly alleged that in one occasion, Genara, Rafaela, Gregoria and Juan Clemente Chaves had intended to justify that they had the property and the possession of a parcel of land of fifty acres in Honduras, Ward of Sábana Llana, Municipality of Rio Piedras, Porto Rico, and bounded on the East by the road leading to Rio Piedras, on the North by property of José Fernández Villamil, on the South by property of Serapio Gómez; and on the West, by property of Laureano del Rosario; and having oppossed to such justification Pedro de Elzaburu, a suit was entered in the District Court of San Juan, and this rendered judgement on May 31st, 1907, in which it was decided that those fifty acres of land were a part of another estate of one hundred and twelve acress of land, the property of Pedro de Elzaburu, who had bought same from the Spanish Government; and said fifty acres of land were not in the possession of the Chaves, neither were same of their property, but they were the property, and in the possession of, Pedro de Elzaburu.

Such judgment was, according to the law, a decision or final determination of the rights of the parties, as they were submitted to the Court.

In that suit, the question of possession and of property of the fifty acres of land that the Chaves pretended as theirs, were properly put in issue and both questions, after a long and laborious evidence and of a convenient argument,

were resolved and decided in a final manner by the Court.

In that suit, the parties were the same as in the present and occupied the same position; on one side Pedro de Elzaburu and on the other Gregoria, Genara, Rafaela and Juan Clemente Chaves.

In such conditions, the final judgement rendered by the Court, has all the weight of a conclusive presumption, of those that cannot be contradicted, and which bind the Court to give a judgment in conformity therewith.

The parties interested in that suit, are bound by the judgement in such a form, that the points therein resolved can not be the object of new suit and new issue; they have the category of *res-judicata*, and such a judgement is, for the litigants, a law.

The Supreme Court of the United States has decided in a great number of cases, this point of the force of a judgment duly rendered.

It is sufficient to our purpose to cite some of them:— In the case "Last Chance Mining Co. vs. Tyler Mining Co.", 157 U. S. 683, 15 Sup. Ct. Rep. 733, the Court said:

> "A prior judgment, in all respects regular, is conclusive in a latter action between the same parties on a different claim, as to the particular ground in controversy in the prior action and binding by way of estoppel as to every fact necessarily determined by it."

And in the case "Southern P. R. Co. vs. United States, 168 U. S. 1, 18 Sup. Ct. Rep. 18, the Supreme Court decided:

> "A judgement, if admissible in evidence at all, is conclusive of the matters in issue and actually determined by it."

And in the case "United States ex-rel. Harshman vs. county Court 122, U. S. 306, 7 Sup. Ct. Rep. 1171, the Court said:

> "A judgement concludes the parties thereto and those in privity, not only as to every matter actually put in evidence to sustain or defeat the claim, but also as to any matter admissible to that end; and extends not only to the judgment itself but to all facts involved in it, and upon which it must have been founded."

The Supreme Court of Porto Rico, in the appealed judgment, committed error in not applying these principles and not granting full authority to the judgment above cited, in which the question of property of the fifty acres was resolved.

In the appealed judgment, case No. 799 of the Supreme Court of Porto Rico, it is affirmed that the judgment of the District Court of San Juan in the case No. 341, Pedro de Elzaburu vs. L. Rosario, Genara, Gregoria, Rafaela and Juan Clemente Chaves, was of a especial character. But it suffices to read the judgment (Pages 30 and 31 Transcript of Record) to affirm that in that case, all the regular procedure was followed, all the evidence was presented and all the questions were submitted.

Then the case under discussion was not one in which the resolution was discretional, but it was a case in which the necessary isues were presented, and which was resolved upon its merits.

SECOND QUESTION.

> "Possession is acquired either by the material occupation of the thing or the right possessed or by the fact that they remain subject to the action

of the will, or by proper acts and legal formalities established for acquiring such right."

(Section 4510 Statutes of Porto Rico, and 440 Civil Code of Porto Rico.)

"Possession as a fact cannot be recognized in two different personalities, unless in cases of indivisibility. If a question arises regarding the fact of possession, preference shall be given to the present possessor; if the date of the possession coincide, to the one presenting a title; and when all these conditions are equal, the thing shall be placed in deposit or judicial keeping, whilst the possession or property shall be determined through proper proceedings.' (Section 3517 Statutes of Porto Rico and 447 Civil Code of Porto Rico).

"Records of possession shall prejudice or favor third persons from the day of their date, but only as to the effects which the laws attribute to the mere possession."

The Supreme Court of Porto Rico, in the judgment appealed from, states that on September 4th, 1895, the Spanish Government recorded the possession of a tract of land situated in a place known as Honduras, Ward of Sábana Llana, Rio Piedras, and consisting of one hundred and twelve acres of land, bounded onthe North by lands of Frutos Caloca and Juana Rivera; on the South, by lands of Laura García, Julia Zayas, Prudencio Cruz and Succession of Luis Vazquez; on the East, lands of Ignacio Llompart, Valentín Rondón, Succession of Juan Hernaiz, Prudencio Cruz and María de la O. Andino; and on the West by lands of Atanasio Vargas and Laureano Rosario. That such estate was sold to Juan M. Cuadrado, at auction; and Cua-

drado assigned his rights to Pedro de Elzaburu, to whom the deed of sale was made, and the deed was recorded in his favor.

The judgment acknowledges that Alonso M. Hernández, hypothecated certain lands in favor of the Spanish Government, to guarantee the faithful performance of his duties as Collector and Hernández having failed in such duties, the Government through some legal proceedings seized the lands on May 25th, 1875. And the judgment acknowledges the existence of a deed executed at Cayey, on May 5th, 1854, by which José Saturnino, Isidra, Frutos and Daría del Otero sold to Alonso Hernandez an estate consisting of one hundred and forty to one hundred and fifty acres, in barrio Honduras, Rio Piedras, adjoining the lands of Marchioness of Leon and José de la Cruz.

That was the property seized by the Spanish Government, and surveyed by the Engineer; and that was the estate seized by the Mayor of Rio Piedras, acting for the Spanish Government.

As to María Chaves, it will be noticed that she was present while the survey of the land was made; and she did not offer any title or document to justify that the lands she was occupying belonged to her.

It is beyond all doubt, that the Spanish Government, by virtue of the bond or guarantee executed in its favor by Alonso M. Hernández, occupied lands which, according to the deed of 1854, pertained to said Hernández; that after careful endeavors at different times for the purpose of locating these lands, it was finally found to be an estate of one hundred and twelve acres, for which there existed no title in favor of Canetti, nor of the Chaves, nor of any other person who was not Hernández or the Oteros; that said estate was occupied without protest or opposition on the part of any person and a justification of possession was duly made which dates from June 5th, 1895 and which was recorded on the 4th of September 1895.

The supposed possession of the fifty acres by Paula

Chaves, was recorded in the Registry of Property on March 11th, 1896.

In the judgment appealed from, the importance of the deed of 1854 in favor of Alonso Hernández was not considered; omission was made of the endeavors of the Spanish Government to determine the estate as well as the taking of possession of the same, and of the recording of said possession prior to the one executed in favor of Paula Chaves.

The defendants Chaves, alleged that their mother Paula Chaves, had purchased the fifty acres from Santos Canetti, but it does not appear in any form that Canetti had any title of property over these fifty acres.

We have that, while the Spanish Government had, as a title, the deed of 1854, the bond of Hernández, the authorization to take possession thereof, the occupation of the estate, and the procedure to justify the possession, and the recording of this in the Registry of Property; the defendants Chaves had no title whatsoever, except the information of possession made by them after the one executed by the Spanish Government.

The material and legal possession of the one hundred and twelve acres, of which the fifty acres pretended by the Chaves as theirs, are a part, was in favor of the Spanish Government, if the Section or Articles No. 440 of the Civil Code of Porto Rico, which is equal to Article No. 438 of the Spanish Civil Code, is correctly applied.

The Spanish Government has materially occupied the estate, has held same under its dominion and has complied the legal formality of the recording; then this is its possession, according to law.

In the meantime, the Chaves have witnessed the occupation of the estate; htey have no title when the Spanish Government takes possession of the estate, and they have no power or control whatsoever over this estate. They occupy the fifty acres as mere matter of tolerance.

In accordance with Section 447 of the Civil Code of

Porto Rico, the possession, as a fact, cannot be in two different persons as the same time, an the preference corresponds, either to the actual possessor or owner, or to the one who is the longest time in possession, or the one who presents the title.

In this case, Elzaburu, whose title comes from the Spanish Government, is the actual owner of the estate; he has his deeds of property and his record in the Registry of Property, and he also possesses the judgment in which the District Court declares him to be the proprietor and owner or possessor of the entire estate. It is therefore, error to give the preference to anyone as the Chaves, who have none of these conditions:

THIRD QUESTION.

"Possession, as a fact, cannot be recognized in two different personalities, unless in cases of indivisibility. If a question arises regarding the fact of possession, preference shall be given to the present possessor; if there be two possessors to the one longest in possession; if the dates of the possession coincide, to the one presenting a title.

(Section 440 Civil Code of Porto Rico, and 3517 Statutes of Porto Rico).

"Records of possession shall prejudice or favor third persons from the day of their date, but only as to the effects which the laws attribute to the mere possession.

(Section 394 Mortgage Law of Porto Rico).

"Prescription which does not require a good title shall not prejudice a third person if the pos-

session on which it is to be based does not appear of record.

"Nor shall prescription which requires a good title prejudice a third person if such title is not recorded.

(Section 35 Mortgage Law of Porto Rico).

"Authentic documents for the purpose of the second paragraph of Article 21 of the Law shall be considered lease contracts of the last 10 years, in which mention is made of the universal title; judicial records of possession, survey or demarcation; judgments rendered in summary proceedings relating to possession or any other instruments which are admissible as evidence in which express mention of the property is made, and of its origin, in terms sufficiently explicit in the opinion of the Registrar." (Section 87, Regulations for execution of the Mortgage Law).

In the judgment appealed from, the Supreme Court of Porto Rico has admitted as valid and sufficient, the statement of some witnesses, who assure that the fifty acres of land in question were sold by Santos Canetti to the mother of the defendants Chaves; on the other hand it has considered as insufficient the efforts of the Spanish Government, the demarcation and authorization to take possession of the estate.

In this case, the Supreme Court of Porto Rico committed error in not applying the law cited in the argument of this third question.

If there are two owners or possessors and one has title, as is the fact with the Spanish Government, to it corresponds the possession. If an owner holds as title the statements

of some witness, and the other, his deeds, documents of demarcation, expedients and the taking of possession, no doubt exists that the later is the one who has title; and not the first one; and the latter must be legally preferred as owner or possessor. And, if there is an owner, who has recorded his rights, he is preferred to those who thereafter wish to justify an adverse possession.

In the information presented as evidence (Pages 14 and 15 Transcript of Record), it appears that Santos Canetti was in the estate of the Oteros, but not as the owner or holder of same, and as Canetti had no title and he was not the owner of the estate he could not legally sell any part thereof.

Notwithstanding these facts, the Supreme Court admitted as sufficient tittle, the so called sale made by Canetti to the Chaves or their predecessors.

In the dissenting opinion of Honorable Chief Justice José C. Hernández, we find this point marvelously exposed or explained. It says:

> "Canetti did not obtain from Juana María Otero the possession of the lands which the latter acquired from Eugenia de la Cruz, but was a trespasser, judging from the report made by the duly accreditted official, García Zaens, in the year 1892, which stated that the lands seized belonged to Juan Otero, who lived in the Barrio of Honduras in the year 1820, when he changed his residence to Caguas, and left Juan Canetti in charge who remained in possession up to the time of his death, after which, his son sold said lands to Clemente, the husband of Juana Chaves, said Clemente holding possession at the time of the seizure. The defendants have not presented any title as good as, or better than the public deed of May 5th, 1854,

from which the plaintiff derives his title, for there was no proof that Canetti, from whom the defendants derive their rights, lawfully acquired the property from Juan Otero.

FOURTH QUESTION.

"It is hereby ordered that each of the "Escribanos" (Notaries) has to have, and shall have a book of protocal, bound with full sheets of paper, on which he is to write and shall write in full the notes of deeds before him executed or to be executed; and in which note the whole deed to be executed shall be contained, expressing the persons that execute it, the day, month and year, place where it is executed and specifying the terms, parts, clauses, renunciations and submissions to which the parties assent; and after this being drawn, said Notaries shall read them to the parties and witnesses, and if the parties agree they shall sign the deed with their names, and if they cannot sign, some of the witnessses shall sign in their stead." (Law 1, Title XXIII, Book X-Novísima Recopilation).

According to the law in force in 1854, that is the Novísima Recopilación, the presence of the witnesses at any and all deeds before a Notary, was necessary; but the signature of witnesses was not required by any law then in force.

The Supreme Court of Porto Rico in discussing the validity of the deed of sale executed in favor of Alonso M. Hernández, on May 5th, 1854, denies weight and authority to such deed, because the signatures of the witnesses do not

appear there on. The apellant sustains that the Court committed an error of law since the signature of the witnesses was neither necessary nor required by the laws then in force.

Therefore, we respectfully pray that the decision and judgment of the Supreme Court of Porto Rico, rendered on March 4th, 1903, in this case, be repealed and the judgment of the District Court of San Juan rendered on August 3rd, 1911, be confirmed.

Respectfully submitted,

J. TEXIDOR,
Counsel for Apellant.

ELZABURU *v.* CHAVES.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

No. 52. Submitted November 1, 1915.—Decided November 29, 1915.

The former practice in regard to appeals from the Supreme Court of Porto Rico provided by § 35 of the Foraker Act of 1900, was superseded by § 244, Jud. Code, subjecting appeals from that court to the same regulations as appeals from the District Courts of the United States thus extending the review of this court to include questions of fact, and § 244 has been repealed by section three of the act of January 28, 1915, with a reservation of cases then pending in this court.

In this case the record discloses no sufficient ground for reversing the court below on questions of fact.

The courts of Porto Rico having held, prior to the decision in this case,

that a judgment in a proceeding under § 395 of the Mortgage Law to establish title was not *res judicata* as between the party instituting the proceeding and a party opposing it, and having also held that § 395 had not been repealed either directly or by implication, *held* that such prior decisions had stood so long unchallenged as to have become a rule of property and should not now be overruled.

A party defeated in a statutory possessory proceeding in an inferior court, which a higher court has already held not to be a proceeding in which the judgment is *res judicata*, may rely upon such decision and refrain from appealing from such adverse judgment and bring suit in the courts to set it aside.

19 Porto Rico, 162, affirmed.

THE facts, which involve the title to land in, and the construction of the Mortgage Law of, Porto Rico, are stated in the opinion.

Mr. J. Texidor for appellant.

There was no appearance, nor was any brief filed, for the appellee.

MR. JUSTICE PITNEY delivered the opinion of the court.

This suit was commenced by the present appellant in the District Court of San Juan to set aside as null and void certain possessory proceedings instituted by Paula Chaves in the year 1895 with respect to an estate containing 50 cuerdas of land, situate at a place known as Honduras, in the ward of Sabana Llana, in the Municipality of Rio Piedras, Porto Rico, and the resulting entry of possession in the Registry of Property of San Juan, and to require the defendants (the present appellees), who are children and heirs of Paula Chaves, to vacate the property and deliver up possession to the plaintiff as the lawful owner. The District Court rendered judgment in his favor; but the Supreme Court of Porto Rico reversed this judgment and

dismissed the complaint. 19 P. R. Sup. Ct. 162. The present appeal was taken under § 244, Jud. Code (Act of March 3, 1911, 36 Stat. 1087, 1157, c. 231), it appearing that the estate in question exceeds five thousand dollars in value.

The transcript contains, in addition to the evidence, a "statement of facts in the nature of a special verdict," made up for the purposes of the present appeal in the manner contemplated by § 35 of the Foraker Act (of April 12, 1900, ch. 191, 31 Stat. 77, 85). See *Rosaly* v. *Graham*, 227 U. S. 584, 589; *Ochoa* v. *Hernandez*, 230 U. S. 139, 143. But that practice was superseded by § 244, Jud. Code, which subjected appeals taken from the Supreme Court of Porto Rico to the same regulations as appeals from the District Courts of the United States, thus extending our review so as to include questions of fact.[1]

Plaintiff asserted that the 50 cuerdas were part of a tract of 112 cuerdas, and this in turn part of a tract containing between 140 and 150 cuerdas formerly owned by Alonso Hernandez, who acquired it in the year 1854; that Hernandez hypothecated this property to the Spanish Government as security for the faithful performance of his duties as collector of internal revenue; that because of an embezzlement of public funds by him the property was seized by the Government in the year 1875; that about 20 years later, on June 5, 1895, it took possession of the land, and on September 14, in that year, possession was recorded in the Registry in favor of the Government, without prejudice to third parties who might have a better title; and that on October 15, 1897, the tract of 112 cuerdas was sold at auction to one Cuadrado, who transferred his right to plaintiff, and thereafter, by deed of

[1] Section 244, Judicial Code, was repealed by section three of the Act of January 28, 1915, 38 Stat. 803, 804, ch. 22, but with a reservation of cases then pending in this court, as the present case was.

October 17, 1898, the proper public official conveyed the land to plaintiff. As to the source of the title of Hernandez, plaintiff claims to have shown by evidence that prior to the year 1819 the whole tract was inherited by Eugenia de la Cruz and her brother, José, from their grandparents, and the brother conveyed his share to the sister; that in that year Eugenia sold the land without deed to Juana Maria de Otero; and that after the death of Eugenia, and in the year 1836, her son and testamentary executor instituted proceedings to prove the inheritance of the estate by his mother and the sale of it to Mrs. Otero. In these proceedings, which were in evidence, several witnesses testified that Eugenia de la Cruz was the owner of the property then in question for many years prior to the sale of it to Mrs. Otero in 1819, but agreed in saying that at the time of testifying and for some years before one Juan Caneti was in possession of it under some title unknown to them. The testimony having been forwarded to the court of San Juan, it was ordered that the owners of the adjacent properties and the Sindico Procurador be heard. The property owners waived hearing. It does not appear that Caneti was either summoned or heard. The Sindico made no objection to approving the investigation, "for although the witnesses say that said property is possessed by Juan Caneti, this does not annul the ownership had by Eugenia, and Juana may have leased or sold it to Caneti." The investigation was thereupon approved by the court. Hernandez' title was derived in the year 1854 under a public deed made by a brother and four sisters named Otero, in their own name and for two other brothers named, for "an estate in the barrio of Honduras, Rio Piedras, which is bounded by lands belonging to the Marchioness de Leon and to José de la Cruz, and is composed of 140 or 150 cuerdas, the exact number of which will be stated in the deed to be executed for the purpose,

as well as the demarcation thereof, when the same is surveyed."

Defendants (the present appellees) alleged that Juan Caneti was the true owner at least of the tract of 50 cuerdas now in dispute; that from him it passed to his son, Santos Caneti, who in the year 1867 sold it on instalments to Ramon Clemente, the husband of Paula Chaves, from whom it descended to Paula and the defendants, who are her lawful children by Clemente. There was substantial evidence tending to support these allegations. It was also shown quite clearly that Paula Chaves was in continuous possession from the year 1875 until her death in 1899, after which event defendants held continuous possession down to the time of the suit. In the year 1895 Paula instituted proceedings for the recording of her possession, in which the adjoining owners were summoned, testimony was taken, and the proceedings were approved November 7, 1895, and recorded in the Registry of Property in the month of March following.

The Supreme Court of Porto Rico treated the present suit as partaking of the character of an action of ejectment to such extent that it devolved upon plaintiff at the outset to prove that he was the lawful owner of the lands claimed by and in the possession of defendants. The court reviewed the evidence, found that plaintiff's chain of title did not clearly identify the location or boundaries of the land claimed by him, that the evidence of Hernandez' title was dubious, and, while the tract of 50 cuerdas was clearly comprised within the boundaries which the Spanish Government fixed for the properties sold by it to plaintiff, there was so much doubt respecting the question of ownership as to render it impossible to reach the conclusion that plaintiff had proved his title. It was pointed out that in the proceedings instituted in 1836 no description of the property was given, that the witnesses then examined failed to establish the possession of Mrs. Otero, but did

refer to the fact of possession by Juan Caneti, who was neither summoned nor heard; that it was not established in what manner the Oteros who made the deed of sale in 1854 to Hernandez were connected with Mrs. Otero named in the proceedings of 1836; that it was not shown how the seizure of the property by the Spanish Government in 1875 was carried into effect, or the quantity or location of the property seized; that there was no record of the details connected with the act of taking possession of the 112 cuerdas by the Mayor of Rio Piedras in behalf of the Government on June 5, 1895, as alleged by plaintiff, but that even if those 112 cuerdas included the 50 cuerdas in controversy it appeared that Paula Chaves, who at that time was in possession of the 50 cuerdas, not only remained in possession, but for the purposes of the possessory title proceedings, brought by her later in the same year, obtained a certificate from the Mayor, the Secretary, and the Sindico of the Municipality of Rio Piedras stating that according to the records in the municipal archives she was in possession under title of ownership; and that from the whole of the evidence it appeared that the Canetis had held continuous possession in early times, and the Chaves family at least from 1875.

Our examination of the record discloses no sufficient ground for reversing the Supreme Court of Porto Rico upon the questions of fact.

The chief reliance of appellant is upon certain questions of law, the first insistence being that the court erred in denying the force and effect of *res judicata* to a decision rendered by the District Court of San Juan May 31, 1907, in a former action between the present parties. It appears that defendants, as heirs of Paula Chaves, instituted a proceeding in the municipal court of San Juan for the purpose of converting the entry of possession of the 50 cuerdas previously made in her favor into a dominion title; that plaintiff opposed the conversion, upon the trial

decision was rendered in his favor, and on appeal the District Court of San Juan declared that the 50 cuerdas were not in possession of defendants but were part of the estate of 112 cuerdas belonging to plaintiff, that he was in lawful possession, and that the heirs of Chaves had no right to convert their recorded possession into a dominion title.

The Supreme Court held that this decision was not *res judicata*. Appellant cites, to the contrary, § 188 of the local Code of Civil Procedure (Comp. Stat. P. R., § 5172), which declares that "A judgment is a final determination of the rights of the parties in an action or proceeding," and §§ 59 and 101 of the Law of Evidence (Comp. Stat. P. R., §§ 1427, 1469), which are to the effect that, as to parties notified, "a judgment or final order in an action or special proceeding" is conclusive.[1]

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[1] (1427) SEC. 59. The effect of a judgment or final order in an action or special proceeding before a court or judge of Porto Rico . . . having jurisdiction to pronounce the judgment or order, is as follows:

1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a decedent, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title to the thing, the will, or administration, or the condition or relation of the person;

2. In other cases the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, provided they have notice, actual or constructive, of the pendency of the action or proceeding.

(1428) SEC. 60. Other judicial orders of a court or judge of Porto Rico . . . create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity. . . .

* * * * * * * *

The question is, whether the decision of May 31, 1907, was "a judgment or final order in an action or special proceeding" within the meaning of the sections cited. The proceeding was instituted under Article 395 of the Mortgage Law (Comp. Stat. P. R., p. 1108), which enables an owner of property having no written title to record his ownership upon proving it before the judge of the court of first instance, or municipal court, under prescribed formalities. Notice is given to the person from whom the property may have been acquired, or his predecessor in interest, and to the representative of the department of public prosecution. The judge is to "receive written pleadings upon the claims and evidence which may have been presented by the representative of the department of public prosecution or by the other persons who may have attended the proceedings," and in view of their allegations he is to decide upon the evidence and declare whether the ownership of the property involved has been established; any person interested may appeal from this decision; and "if said decision is accepted or affirmed, it shall constitute a sufficient title for the record of the ownership."

There seems to be no question that such a decision, as the law stood at the time of the annexation of the Island to the United States, was not conclusive upon the question of ownership, even as between the parties participating in the proceeding, but was subject to be set aside in an ordinary action.

By Article 413 of the Mortgage Law it was declared "None of the articles of which this law consists can be repealed except by virtue of another special law." And by § 8 of the Foraker Act of April 12, 1900, c. 191, 31 Stat.

(1469) SEC. 101. The following presumptions, and no others, are deemed conclusive:

* * * * * * * *

6. The judgment or order of a court, when declared by this code to be conclusive; . . .

77, 79, the law was continued in force until amended or repealed by the legislative assembly or by Act of Congress. The Code of Civil Procedure was enacted by the legislative assembly March 10, 1904. The Law of Evidence was enacted March 9, 1905. As already shown, it refers to "actions and special proceedings." Upon the same day another act was approved, entitled "An Act relating to special legal proceedings." (Comp. Stat. P. R., p. 300.) It contains provisions for the recording of public instruments and wills, for declaration of heirship, administration of decedents' estates, appointment of guardians, the care of the persons and properties of minors, and other matters; and in its final section there is this declaration: "All previous laws in conflict herewith are hereby repealed; but the special proceedings established in the Civil Code, in the mortgage law and its regulations, and in any other law, in so far as not provided for by this act, remain in force."

The effect of these subsequent enactments upon the special proceedings established in the Mortgage Law and Regulations was considered by the Supreme Court of Porto Rico in *Giménez* v. *Brenes* (1906), 10 P. R. Sup. Ct. 124, 131, 133, etc., and again in *Gonzales* v. *The People* (1906), 10 P. R. Sup. Ct. 458, 462. In the former case it was held, with respect to summary proceedings for the collection of a mortgage debt under Article 128, in the latter with respect to a special proceeding under Article 395, that the provisions of the Mortgage Law remained in force notwithstanding the Code of Civil Procedure, and in the latter case it was distinctly held that the proceedings to establish ownership did not produce the effect of *res judicata*. This was reaffirmed by the same court in *Calderon* v. *Garcia* (1908), 14 P. R. Sup. Ct. 407, 416. And see *Ochoa* v. *Hernandez*, 230 U. S. 139, 151. These decisions of the Supreme Court of Porto Rico are based upon reasoning that, while conceding the full authority

of the legislative assembly to repeal or modify the Mortgage Law, in effect invokes Article 413 of that law (continued in force as a part of it by the Foraker Act) as prescribing a rule of interpretation to be applied in testing the intention of the law-making body as expressed in subsequent enactments. No express repeal of Article 395 of the Mortgage Law being found, and the question being one of implied repeal, the court deemed it manifest that the legislative assembly, in adopting the Code of Civil Procedure and the Law of Evidence, did so with full knowledge of Article 413 of the Mortgage Law, and therefore intended no implied repeal. And the Law of Evidence having been enacted contemporaneously with the Act Relating to Special Proceedings, the latter act was looked to in construing § 59 of the former, and the express reservation of the special proceedings established in the Mortgage Law and its Regulations was treated as showing that they were to be left in existence with their former force and effect, and no greater. This view, to say the least, is a reasonable one; and since it is plain that the decisions, having stood so long unchallenged, have established a rule of property, it seems to us that they ought not now to be overruled. It is worthy of remark that *Gonzales* v. *The People*, *supra*, was decided more than a full year before the decision of the District Court of San Juan which appellant insists ought to be treated as conclusive. Defendants may well have refrained from taking an appeal from the decision of the District Court in reliance upon the previous decision of the higher tribunal that it had no conclusive effect.

The remaining questions of law raised by appellant resolve themselves, upon analysis, into a mere criticism of the process of reasoning by which the court reached its conclusions upon the facts. We find them without substantial merit, so far as their effect upon the result is concerned.

Judgment affirmed.